

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 74727

AT WELLINGTON

<u>Before:</u>	M Hodgen (Chairperson) G Pearson (Member)
<u>Counsel for the Appellant:</u>	D Vincent
<u>Appearing for the NZIS:</u>	No Appearance
<u>Date of Hearing:</u>	5 December 2003
<u>Date of Decision:</u>	26 April 2004

DECISION BY G PEARSON

[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 citizen of Iraq.

INTRODUCTION

[2] The appellant is a 26 year-old single woman who arrived in New Zealand during November 2002, and lodged written notice of her claim for refugee status on 23 December 2002. The appellant was interviewed by the RSB on 16 January 2003. The RSB issued a decision declining the appellant's claim for refugee status on 16 June 2003. The appellant now appeals against that decision.

THE APPELLANT'S CASE

[3] The following is a summary of the appellant's evidence. It is assessed later.

[4] The appellant lived in Baghdad before coming to New Zealand. The appellant was born in Mosul, a large city in the northern part of Iraq. At that time the family consisted of the appellant's parents and three children. The appellant was the youngest child, having a brother, about 17 years older, and a sister about 14 years older.

[5] The appellant and her family are Assyrian Christians, a minority group in a predominantly Muslim country, their main centre of population being the Mosul area.

[6] The appellant's family had relatives living in Mosul and Baghdad. They included the appellant's maternal aunt living in Mosul.

[7] The appellant's family life in Mosul was centred in the Assyrian Christian community. The appellant attended a Christian school in Mosul. The family lived in houses owned by the Christian church, attended the church, and socialised with other Christian families living in the area. There was a major change in the family about 1990. The appellant's mother died at about that time, and the appellant left school to assist with her care during her final illness. At about the same time the appellant's older brother and sister left home, as they had each married and established their own respective households.

[8] The appellant's brother pursued a military career and her sister qualified as a professional engineer and worked as an irrigation engineer.

[9] The appellant was accordingly left living with her widowed father. Less than a year after the death of her mother, the appellant's father remarried. His second wife (the appellant's stepmother) was some 15 or 20 years younger than him. At this time the family (the appellant, her father, and stepmother) moved to Baghdad. They moved to a house that had been owned by the appellant's mother, which she had transmitted to the appellant on her death. Accordingly, the family now lived in Baghdad in a house owned by the appellant.

[10] The appellant had had a good relationship with her father up to this point. However, the relationship between the appellant and her stepmother deteriorated, and consequentially the relationship with her father also soured. The appellant said there were continuous problems. The family attended a Christian church in

Baghdad, and met other Christians through the church.

[11] The appellant described discrimination to which Assyrian Christians in Iraq were subjected during the regime of Saddam Hussein. She said her own experience involved harassment when going to church or going shopping (Christian people, particularly women were identifiable by their clothing). The harassment included verbal harassment, and vehicles being driven so as to create dust. The appellant also related abuse by the sons of Saddam Hussein, in respect of some Christian women, but not to the appellant herself. When it was suggested that Muslim women were also abused by that family, the appellant said it was only “bad Muslims”, who would be abused. The appellant said she experienced harassment until leaving Baghdad, but only rarely in Mosul, though she was a child at the time, and living in a Christian area. The appellant said her sister would wear a *hejab* (which Muslim women wear) when shopping to avoid being harassed.

[12] The appellant, her father and stepmother lived in a difficult domestic situation, with tension between the appellant and her stepmother, with the appellant’s father increasingly “taking the side” of the appellant’s stepmother. The appellant said that her father and stepmother discouraged her from getting married, as she owned the house and they did not want to be moved from it. There was some encouragement by them for her to find work, but without qualifications the appellant did not think she was able to do so. In or about August 2002 the tension in the household increased, and the appellant was told to leave the home by her stepmother, to which her father acquiesced.

[13] The appellant went to live with a friend, K, in Baghdad in or about August 2002. At this point the appellant took steps to sell the house she owned, which was now solely occupied by her father and stepmother. She sold the house for US\$6,500.

[14] After receiving the money from the sale of the house the appellant put in place plans to leave Iraq. She did not tell her father and stepmother that the house had been sold, but left that to the purchasers. She then travelled to Zakho, a town in the north of Iraq adjacent to the Turkish border. The appellant travelled through Mosul, but did not seek to contact relatives when passing through.

[15] In Zakho the appellant made contact and stayed with some relatives, who

she described as coming “from the same tribe”. There she sought out someone who would transport her from Iraq. She rejected the idea of attempting to stay in Iraq with her relatives as there were difficulties with rations, and they had their own commitments and difficulties. People in Zakho put the appellant in contact with a people smuggler (the smuggler). She told him that she wanted to leave Iraq and go to a Christian country, but did not mind where. The appellant wished to leave Iraq as she could not be accommodated with her family, and Muslims would have killed her had she remained in Iraq. The smuggler demanded a price of US\$5,000. The appellant had a list of contact details in various countries, which her friend K had given her. The contact details included K’s aunt who lives in Wellington.

[16] The appellant put her trust in the smuggler, embarking on a journey without knowing where she was going and she ultimately arrived at Wellington airport. The appellant related the phases of the journey from Zakho to Wellington, but could not identify any place or country – apart from the fact that first part of the journey involved crossing the border near Zakho into Turkey. The journey involved road transport, a boat, train travel, walking and air travel. The final stage of the journey was a short flight, which landed at Wellington in November 2002. The smuggler had entered the aircraft with her and had the appellant’s handbag which contained US\$1,000. The appellant has not seen the smuggler since and he stole her handbag and its contents.

[17] After obtaining assistance from an interpreter at Wellington airport the appellant made contact with K’s aunt. At the time of the appeal hearing the appellant was still living with her.

[18] On 20 March 2003 the United States of America launched air strikes against Iraq as the commencement of its invasion of Iraq. The Saddam Hussein regime was toppled, and at the present time United States and allied forces occupy Iraq – with some resistance.

[19] While these events have been taking place the appellant has been in New Zealand. She has not had contact with her family since she left. The extent of the appellant’s communications with Iraq has been that K and K’s aunt have been in telephone contact. There has been no news of relevance to the appellant’s refugee claim.

[20] Accordingly, the appellant's knowledge of conditions in Iraq today is limited.

[21] Counsel for the appellant produced written submissions dated 3 December 2003 prior to the hearing, and further submissions dated 16 December 2003 following the hearing. Country information was produced with the initial submissions, and further country information was referred to during the hearing.

THE ISSUES

[22] 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."

[23] 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?

[24] It is an elementary principle of refugee law in New Zealand that the material date for the assessment of refugee status is the date of determination. See *Refugee Appeal No. 70366/96 Re C* (22 September 1997) at 33-39; [1997] 4 HKC 236, 264-268 where the authorities are collected. *Refugee Appeal No. 71684/99* [2000] INLR 165 at 46 further discusses the principle. The definition in Article 1A(2) requires that the prospective risks faced by the refugee claimant if returned to the country of nationality or habitual residence be assessed.

ASSESSMENT OF THE APPELLANT'S CASE

[25] Before the Authority can determine the framed issues an assessment must first be made of the appellant's credibility.

[26] We extend the appellant the benefit of doubt, and her evidence is accepted. However, we do not accept that her fear that she would be killed by Muslims had she remained in Iraq was well founded. The appellant did not give evidence that established a real chance of serious harm at the time she left Iraq or now.

Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to Iraq?

[27] The first question to be addressed is whether the appellant's status as an Assyrian Christian puts her at risk. We are satisfied that it does not.

[28] While the dominant religion in Iraq is Muslim and the Assyrian Christians are a minority religion and culture within Iraq, *Christianity Today* (www.christianitytoday.com), a Christian publication cited by counsel, states:

"According to The Daily Telegraph of London... more than a million Assyrian Christians live in Iraq. Operation World suggests that those figures are highly inflated, and says there are only 358,281 Christians in the country total (about 22,000 are identified as evangelicals). David Barrett's World Christian Encyclopaedia splits the difference, counting 730,774 Christians (74,800 evangelicals) among the population of 22,946,245."

[29] Counsel also referred to the United States Department of State *Country Reports on Human Rights Practices: 2002 – Iraq* (31 March 2003) (the *DOS Report*), which refers to an estimated 350,000 Assyrian and Chaldean Christians. The numbers are clearly not precise. However, it is evident that there are substantial numbers of Christians in Iraq, and it appears the most numerous category is Assyrian Christians. Material supplied by counsel also includes an internet publication *Christians in Iraq* by Glen Chancy (<http://lewrockwell.com>) which records the history of the Assyrian Christians, noting that they are an ethnic group.

[30] The *DOS Report* states that most Assyrians live in the northern provinces of Iraq, and the regime of Saddam Hussein would often accuse Assyrians of collaborating with Iraqi Kurds (who the regime persecuted), as part of a pattern of violence and persecution directed against Christian and other religious minorities in the north at that time. Muslims were encouraged to participate, and there have

been instances of mob violence in northern Iraq in recent years, in which Muslim people have attacked Christians.

[31] Clearly there are tensions between groups in Iraq and Christians are vulnerable to those tensions which have continued after the fall of the Saddam Hussein regime. The Glen Chancy article reproduced a copy of a letter of which, the article said, had been delivered in various forms to Assyrian Christian families all over Iraq. The tenor of the letter was an invitation to “stand with the ‘brothers of Muslims’ group and follow basic Muslim rules of wearing the veil and possessing honourable teaching of Islam” and that failure to do so would result in violent acts against the Christian family.

[32] Indeed, factional groups which have difficulty in working in harmony are clearly one of the fundamental obstacles to establishing a viable civil authority in post-war Iraq. The groups include Shi’ite Muslims, Sunni Muslims, Christians, persons of Arab, Kurdish, and Assyrian ethnicity. Those groups are illustrative not comprehensive and persons of a given ethnicity will not all be affiliated with the same religious group.

[33] In addition to the letter sent to Christian families, to which reference has already been made, counsel drew attention to the following:

- (a) A report of 14 June 2003 from World Net Daily (www.worldnetdaily.com). This report refers to two Christian shop owners being shot by “Shari’ah vigilantes” and other violent incidents. In addition, over 100 shops selling alcohol having been burned down in Basra. The report suggests that Basra is particularly difficult for Christians, and that “Christian girls in some parts of the city are now afraid to go to school in case they are kidnapped...”. The report is not specific but it appears likely they would have been located in Basra or a southern area;
- (b) The Roman Catholic magazine *The Tablet* of August 2003 which reports the Archbishop in Baghdad saying that Christian priests were too frightened to leave their homes, and that Christians had become the target of kidnapping;
- (c) A report in the *Daily Telegraph* (UK) of 13 November 2003, which refers to

concerns that Muslim fundamentalists were putting increased pressure on Christians and that they would be forced out of at least one area;

- (d) A report of 20 November 2003 that bombs had been discovered in Christian schools in Mosul and Baghdad. The information presented indicated that one school in Mosul, and one school in Baghdad had been targeted, and the bomb in Mosul “could have caused significant injury or even death”. The bombs were successfully defused.

[34] Counsel summarised this information stating that:

“The reports are consistent and from reputable sources. It is clear that Christians are being targeted and persecuted following the invasion. Whether this is due to Christians being seen as American sympathisers, or simply because there is now an absence of any control is unclear. What is clear is that the persecution is real and aimed specifically at the Appellant’s cultural group.”

[35] Against that background, counsel addressed the foundation for the appellant’s claim to refugee status, and quoted from a letter the appellant presented in support of her claim:

“This is in addition to the miserable situation for Christians during and after Saddam Hussein era. Theft killing and looting has increased dramatically. Organised gangs enter Christian homes where they rob and kill them. Iraq is experiencing the foundation of savage gangs that are killing Christians or [forcing] them to change to Islam. Girls are abducted, raped and killed. Churches have been closed to prevent Christians from exercising their belief in [the] Lord. Women are forced to wear the Islamic clothing. I don’t think you are happy to know that.”

[36] After the hearing counsel filed further submissions (leave having been given to do so at the hearing). One of the issues addressed was country information that suggested the northern part of Iraq was likely to be safer for a Christian person than the southern parts of the country. Counsel maintained that, even if there may be differences, the North is still dangerous for a Christian woman; and furthermore travelling to more secure places is dangerous. Counsel submits that the *Joint British-Danish Fact Finding Mission to Damascus, Amman and Geneva on Conditions in Iraq* in its totality provides a useful overview of the changing conditions in Iraq. Counsel contends that deteriorating conditions are in evidence, the more adverse conditions in the South are spreading to the North, and that it is dangerous to travel from one place to the other.

[37] The political future of Iraq is uncertain. There is an ongoing concern that bigotry, and persecution will be visited on some Assyrian Christian people, due to their religious identification. There are a number of other groups also at risk due to their ethnicity, or religious identification. However, the Authority finds that the risk of harm to this appellant due to her being a single Assyrian Christian woman is at most a random or speculative risk, well below the level of a real chance. There is nothing about her that puts her more at risk than the significant numbers of such women who must exist in the population of some hundreds of thousands of Assyrian Christians living in Iraq. The risk of harm is remote or speculative and we conclude that the appellant does not face the risk of persecution at the level of a real chance, simply because she is a single Assyrian Christian woman.

[38] An element in the appellant's case was that she would be compelled to live alone as a single woman in Iraq and, be at additional risk because of that. Accordingly, it is necessary to consider, whether she would be alone, and if so whether that circumstance creates a real chance of persecution, either on its own or when combined with the appellant's Christianity.

[39] As to whether she would be compelled to live alone at all, the appellant has not claimed that there is anything about her that would make it dangerous, or difficult for any of her relatives to have her living with them in Iraq. Before leaving Iraq the appellant did stay with her friend K, and with distant relatives in Zakho. There is no evidence of the appellant having offended any persons of power or influence, or of her being of adverse interest to any such person or group. Furthermore, there is no reason to suppose that the appellant's family are so indifferent to the wellbeing of family members that they would leave her exposed to serious harm, even if protecting her did involve inconvenience and difficulty.

[40] The Authority accepts the appellant's evidence that she is a woman who is single, and cannot be assured of being able to return and live with her father and stepmother. However, she has other family, with whom her relationships are sufficiently strong that we are satisfied that she would not be required to live alone.

[41] While the appellant gave practical reasons for not wanting to impose on her brother, sister, or maternal aunt in Mosul, or other relatives, because there are rations for food, and the various family units already live in overcrowded conditions, nevertheless, the inconvenience and discomfort of those strictures do

not outweigh the fact that she could live with those relatives.

[42] The appellant did indicate that her siblings and wider family had some sympathy for her and she reported that they knew that her stepmother treated her badly. It is clear that she has a number of relatives, particularly in Mosul and the northern area of Iraq (where she stayed before travelling to New Zealand) to whom she can turn. Furthermore, the appellant was able to stay with her friend K in Baghdad. She had the initiative and ability to relocate from there to Wellington, New Zealand, by herself, and live in K's aunt's home here. The appellant will use this initiative and resourcefulness to find a suitable home in Iraq.

[43] We find the evidence does not establish the appellant will be forced to live alone in Iraq.

[44] It is necessary to consider also whether the current state of instability in Iraq is such that there is a real chance of the appellant being persecuted because she is an Assyrian Christian woman.

[45] To evaluate that it is necessary to consider current conditions in Iraq. It must be acknowledged that the conditions are constantly changing, conditions are difficult given that a brutal totalitarian regime has recently fallen, and Iraq is in a post-war situation where civil government and order are in the process of being established. The war and the general post-war conditions are discussed in *Refugee Appeal No 74664* (15 July 2003).

[46] Given such circumstances, it is important to distinguish between risks that give rise to refugee status (such as persecution based on religious affiliation), and the general risk of harm arising from the existence of conflict. This issue was discussed in *Refugee Appeal No 74666* (3 November 2003), where it was stated:

“Those impacted by civil unrest and even generalised violence are not entitled to refugee status on that basis alone. The focus of the Refugee Convention is quite specific. First, it requires the refugee claimant to demonstrate that he or she faces a real chance of serious harm ie a well-founded fear of being persecuted and second, it requires that the anticipated serious harm is ‘for reason of’ one of the five Convention grounds (ie race, religion, nationality, membership of a particular social group or political opinion). In the words of Professor Hathaway in *The Law of Refugee Status* at 93, refugee law is concerned only with protection from serious harm tied to a claimant's civil or political status. Persons who fear harm as the result of a non-selective phenomenon are excluded. Returning to this point at *op cit* 188 he emphasises again the general proposition that victims of war and violence are not by virtue of that fact alone refugees.”

[47] Turning now to the country information, counsel for the appellant referred to reports of travel being dangerous (citing the *Joint British-Danish Fact Finding Mission to Damascus, Amman and Geneva on Conditions in Iraq* – published August 2003), in Iraq due to “reports of muggings and car-jackings”. The report does not suggest, however, that those risks arise from anything other than general lawlessness – the very circumstances alluded to by Professor Hathaway.

[48] Counsel also addressed the situation of women in post-war Iraq. Some reliance was placed on an Amnesty International report of July 2003: *Iraq: The need for security* (<http://www.amnestyusa.org>). The report refers to few women being on the streets, due to fear of violence, pressure to conform to an Islamic dress code, and the severe impositions on the lives of women in post-war Iraq. The report is appropriately concerned with the situation of women in Iraq generally, not just Christian women. Counsel also refers to Ann Mayer, *Islam and Human rights: Tradition and Politics* (2nd ed, 1995). In short, the point made is that Islamic groups in Iraq have a paternalistic view of society, and it is demanded that women’s lives be lived subjugated to the authority of their husband or another male (such as a father).

[49] The appellant has not produced country information that shows women (of any religious or ethnic group) in Iraq face a real chance of persecution arising from the fact of living alone. The highest the matter can be put is that in parts of Iraq Muslim groups make it difficult for women to leave their homes unaccompanied.

[50] The appellant has not disclosed anything that indicates she has suffered persecution in the past, this being a useful indicator of the risk of future harm, accepting of course that conditions in Iraq have changed. In this regard it is noted that persecution has been defined as the sustained or systemic denial of basic or core human rights demonstrative of a failure of state protection (see Hathaway, *The Law of Refugee Status* (1991) 104 to 108, as adopted in *Refugee Appeal No 2039/93* (12 February 1996) at 15).

[51] In summary:

- (a) The appellant has family support in Iraq, such that she will not be compelled to live alone;

(b) The risk of serious harm as an Assyrian Christian woman, whether living alone or not, is remote and speculative and is below the level of a real chance.

[52] The appellant's fear of being persecuted is not well-founded. It follows that the second issue raised by the Convention does not arise.

CONCLUSION

[53] For the reasons mentioned above, the Authority finds the appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeal is dismissed.

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G Pearson
Member