

# Canadian Council for Refugees



## **Analysis of a small number of Iraqi private sponsorship applications refused at Damascus**

December 2006

### **Background information on cases studied**

The analysis was undertaken as a result of concerns raised by private sponsors at the CCR September 2006 meetings. These concerns related to what appeared to be a pattern of negative decisions affecting Iraqis whose private sponsorship application was decided at the Damascus visa post. Many aspects of the negative decisions appeared problematic. It was therefore decided that the CCR should analyse a certain number of cases.

The analysis concerns eleven cases, all involving Iraqis who had a private sponsorship application refused at the Damascus visa post. The cases were selected by sponsors from a larger pool of Damascus decisions of concern. They are not necessarily representative of negative decisions at Damascus, let alone of decisions overall. On the other hand, there was no attempt to select the most troubling decisions.

Of the eleven cases, ten have decision letters that are dated September 2005 or later. Seven of the decisions are from 2006. One decision dates from January 2004.

In all cases we were able to review the decision letter. In two cases we also have the CAIPS notes. In eight cases we have some documentation putting forward information or comments from the point of view of the applicants (e.g. their account of experiences in Iraq submitted as part of the application and/or a letter from the sponsor to Case Management in Ottawa protesting the decision).

The decisions involve four different decision makers. One decision-maker made six of the eleven decisions.

All decisions were negative as to eligibility, i.e. the applicants were found not to be refugees nor members of the Country of Asylum Class.

### **General comments on decision letters (lack of proper reasons for rejection)**

- The letters are all under 2 pages in length. Most of each letter is taken up with explaining the relevant sections of the Act and Regulations. In 10 out of 11 letters, the part of the letter addressing the applicants' fear of persecution and the reasons for the refusal consists of a single paragraph. In the 11<sup>th</sup> case, there were two paragraphs on these issues.
- Given the short space allotted to addressing the application, it is clear that none of the letters provides much detail on the reason for the refusal. Many of the letters in fact tell the reader little or nothing.

- In none of the letters was there a clear indication which grounds of the Convention refugee definition were being considered and assessed, nor was there any assessment of the various elements of the Country of Asylum definition.
- The most minimalist decision consists of seven lines which provide absolutely no specific information about the application. The same paragraph could therefore be used in any decision rejecting an Iraqi applicant based on credibility:
 

“After carefully assessing all factors relative to your application, I am not satisfied that you are a member of any of the classes prescribed. During the interview, I informed you about my concerns with regards to the credibility of your story and provided you an opportunity to respond but you were unable to provide me with a satisfactory explanation. I am not satisfied that you have a [sic] credible evidence of a well-founded fear of persecution if you return to Iraq or that you have been and continue to be seriously and personally affected by the present situation in Iraq.” [Case 11]
- In addition to this decision, two others provide no explanation for the refusal, but rather refer to the explanation allegedly given at the interview as to why the applicants are not believed. [Cases 3 and 4]. In a fourth case, the letter cites one reason for deciding against the applicants and then arrives at the negative conclusion “for this and other reasons, explained to you at the interview.” [Case 2]
- In several of the decisions, the reader is left to infer the reasons for the refusal as they are not clearly articulated. The decision-maker summarizes very briefly the applicants’ personal history and then concludes that the person is not a refugee or a member of the country of asylum class. For example, in one case there is a summary of the kidnapping of one of the family members and the burning of the family’s store. Then follows the sentence: “You said you remained in Iraq for five months following this incident as you were preparing travel documents and seeking compensation from the authorities for the destruction of your store. I am not satisfied that you have a well-founded fear of persecution...” There being no further explanation, one is forced to guess that the decision maker felt that the fact that the family remained in Iraq for five months undermined their claim. [Case 1]
- In none of the decisions is there any distinct consideration of whether the applicants meet the definition of the Country of Asylum Class.
- It should be noted that the Federal Court generally considers the refusal letter alone to be insufficient as “written reasons” for the decision and looks to the CAIPS notes for a fuller explanation.

### **CAIPS notes**

- In the two cases for which we have CAIPS notes, we have more information about the exchanges at the interview, and some more detail about the reasons for refusal. However, neither set of CAIPS notes provides evidence of a more sophisticated decision-making process than is suggested by the very sparse letters. The CAIPS notes simply record the decision-maker’s opinion of the aspects of the case that appear implausible or not credible and base the decision on that, without any reference to other parts of the evidence, and without reflecting on the answers that the applicants are recorded as having given to the decision-makers’ concerns.

## Specific concerns regarding decision-making

### *Credibility*

- Credibility was an issue in a number of cases, but as noted above, the reasons given for refusing on this basis are sparse, or non-existent.
- Negative credibility or implausibility was sometimes determined on a single point, or limited number of points, without apparent regard for or comment on other compelling aspects. For example:
  - o In one case involving a family that described an experience of kidnapping, the applicants were refused on the basis that the receipts for money transfers to pay the ransom were dated after the family's release. The family had provided a detailed account of a horrific experience of being kidnapped, but this evidence is not taken into consideration in the decision. [According to information provided by the sponsor, the applicants allege that they explained at the interview that the money for the ransom was borrowed locally and the money transfers, for which the visa officer insisted that receipts be provided, were reimbursements by family members in the US of the loan.] [Case 2]
  - o In another case involving a woman who claimed to have been kidnapped, the decision maker stated that the applicant "did not provide sufficient evidence to satisfy me that you and your spouse had \$30,000 in cash in your house". Presumably the applicant must have discussed her experiences at the interview, but there is no reference in the decision letter to any such testimony. [According to a letter written by the applicant describing the experience, her husband had in fact raised the money by selling all the applicant's jewelry.] [Case 12]
- The credibility assessments do not generally include efforts to take into account the context of realities in Iraq. For example:
  - o In one case, the decision maker did not believe that the applicants could have had a US lodger staying with them for a month and a half without being able to tell the visa officer "anything apart from his first name". [This is in any case untrue as the CAIPS notes record that the applicants told the visa officer several things about the lodger.] The decision maker does not mention considering whether the situation in Iraq might make it unwise for Iraqis to associate too closely with a US citizen lodger. The potential of such a risk is actually suggested by the alleged incident of masked gunmen coming to the house and asking for the "foreigner". According to the CAIPS notes, the applicants responded to the decision maker's concern by saying "we do not know his family name because he lived in the upstairs, her and her husband do not mingle with him as they both work. Spouse said people coming from outside do not know the reality of [?] living there." There is no comment on this response – instead the CAIPS notes just go on to record that the applicant was informed of the refusal. [Case 3]
  - o In another case, four siblings had left other family members behind in Iraq, despite the fact that the alleged persecution feared was directed against the family as a whole. According to the CAIPS notes, the siblings when confronted with questions about this responded that their siblings left behind never leave home and also "we didn't have enough money to get everyone to leave and that is why only 4 of us left." The decision maker does not address this suggestion that the remaining family members are at risk but were unable to leave because of financial constraints. [According to the sponsor, since the refusal, one of the siblings remaining in Iraq was shot and wounded and the whole family is now in Syria.] [Case 11].

- The approach taken to credibility is not consistent with jurisprudence. The Federal Court has affirmed a number of relevant principles over the years: decision makers must guard against “overzealousness” when attacking credibility, especially when evidence is given through an interpreter; findings of lack of credibility cannot be based on irrelevant or “peripheral” considerations; plausible or reasonable explanations must be addressed in reasons, failing which it can be inferred that they were ignored, misinterpreted or misunderstood.

*Reference to delay in departure/reavailment*

- In several cases, a delay in departure appears to have been an important consideration in reaching a negative decision (e.g. 3, 5, 13 months). The reasons for delay are simply noted without being analyzed. For example
  - o In one case (cited above) the applicants remained in Iraq for five months following the burning of their store “as you were preparing travel documents and seeking compensation from the authorities for the destruction of your store.” There is no comment on these reasons for not immediately leaving Iraq.
- In two cases, there was apparent reavailment, without proper assessment of relevant criteria related to reavailment. For example:
  - o A family left Iraq after their young daughter was kidnapped and murdered. They fled to Syria and then returned to Iraq for a month “in order to prepare the documents necessary in order to make this application.” The decision letter then simply continues, “Therefore, I am not satisfied that you have a well-founded fear of persecution...” [Case 6]
- The Federal Court has stated, following the academic writing notably of Prof. James Hathaway, that while failure to claim refugee status at the first opportunity may be a relevant consideration in assessing credibility, it does not constitute a waiver of the right to make a claim. Reasonable and plausible explanations provided by the refugee must be considered and addressed.

*Misinterpretation of the Convention refugee definition, notably with respect to “social group”*

- One case involved a person allegedly evading military service. The visa officer refused the application on the basis that: “I am not satisfied that being a person who evaded military service qualifies as membership in a particular social group or a political opinion”. Further analysis was imperative: a person can be considered a refugee for having deserted or avoided military service in certain situations. Refusal can be based on religious convictions, or reasons of conscience. Some people might suffer greater danger because their refusal is tied to reasons of race, ethnicity or political opinion. Their refusal might also be justified if they are being asked to fight in an “unjust war”, condemned by the international community, or asked to fight for a group or organization that is also condemned (perhaps as engaging in terrorism).
- In this particular case, there was also an apparent misunderstanding between the militia and the military (the applicant denies that he claimed he was trying to avoid military service: he says that he stated that he was threatened with forcible recruitment into a militia).

*Failure to consider all relevant grounds for concluding the applicants are refugees*

- In all the decisions, the applicants’ refugee claim is reduced by the decision maker to a specific incident of alleged persecution. Having explicitly or implicitly rejected the claim on that basis, the decision-maker refuses the application overall, without any consideration of whether there might be other grounds outside of the specific incident on which the applicants might be found to be refugees (for example, on the basis of religion or ethnicity).

- This failure to consider all relevant grounds is particularly troubling given that in some cases the applicants specifically referred in the accounts to their feeling of vulnerability as a member of a minority group. Given that these accounts were submitted as part of the applications, it seems clear that the visa officers failed to properly assess all the evidence before them.

#### *Other concerns relating to refugee determination*

- There is no indication that the visa officers understood or applied the basic threshold test for persecution: “a reasonable chance or good grounds that persecution will occur”.
- The personal circumstances of the refugee (and their subjective fear) must be considered in light of the objective context, and the available country documentation. There is no clear indication as to what objective information was used by the visa officers in making their decisions. (Note: a current and accessible documentation package should be available to both the visa officer and the refugees, similar to the IRB Country Documentation Packages).

#### *Failure to consider Country of Asylum Class*

- As noted above, none of the decisions provides distinct reasons explaining why the applicants do not meet the Country of Asylum definition (i.e. have been, and continue to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights in their country of origin).
- This failure to address the second ground of potential eligibility is particularly disturbing as many of the cases seem on their face to contain elements that might be considered to match the Country of Asylum definition. For example:
  - o The family mentioned above whose daughter was murdered was rejected on the basis that they re-entered Iraq to get documentation for the application. It can certainly be argued that their return undermines their claim to a well-founded fear of persecution. However, it does not seem to be in doubt that their 4-year-old daughter was kidnapped and murdered (this is not called into question by the visa officer, and there is a death certificate). As such, one might plausibly consider that the family has been seriously and personally affected by civil war, armed conflict or massive violation of human rights. [Case 6]
  - o In another case, the applicants alleged that they were threatened and the principal applicant’s husband killed because they were working for the US military. The application appears to have been rejected because the applicants remained in Iraq for 13 months after this event. Again, even if the delay in departing Iraq is deemed to undermine the refugee claim, the decision maker ought to consider whether, with a family member killed, the applicants meet the Country of Asylum Class. However, the decision maker does not even comment on whether it is accepted that the family member was killed. [Case 4]

#### **Concerns regarding the interviews**

- In one case, the sponsor wrote to CIC Case Review in Ottawa with detailed comments on the interview style, which was considered belligerent. The sponsor alleges that the applicants reported their concerns immediately after the interview. Among the complaints:
  - o Applicants were not given a chance to fully express themselves
  - o Applicants were scared because the visa officer “screamed” at them during the first 10 minutes.
  - o The visa officer showed scepticism towards all the answers, notably with respect to their educational background. [Case 2]

- CIC Policy Manual OP5, (section 13.1) suggests that Visa Officers should not show “undue eagerness in attempting to find contradictions”, and must not be “over-vigilant by microscopically examining the applicant”.

### **Conclusions**

The objective of the analysis of these cases is to make a preliminary evaluation of the decision making process at Damascus. It is not suggested that any or all of the applicants should necessarily have been accepted: we obviously don't have all the relevant information.

The analysis raises a number of serious concerns relating to how well the visa officers were making eligibility determinations. These include problems with respect to:

- o credibility assessment
- o evaluation of a delay in departure/reavailment
- o interpretation of the Convention refugee definition, specifically with respect to particular social group
- o considering all evidence – both oral and documentary
- o failure to specifically address plausible and reasonable explanations
- o failure to indicate which country documents are being relied upon (e.g. related to alleged changes in country conditions in Iraq)
- o failure to consider the Country of Asylum Class

Overall the cases suggest a general attitude of suspicion towards the applicants' accounts. The stated reasons for not believing the applicants are not objectively sufficient to explain why the account as a whole is rejected.

This preliminary evaluation thus confirms the concerns raised by CCR members about the quality of decision making in some private sponsorship cases at Damascus, suggesting both a bias against the applicants and an inadequate understanding of the legal requirements of refugee determination.