



RPD File No. / N° de dossier de la SPR : VB8-05226/05240

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)	XXXX XXXX XXXX XXXX XXXXXXXX XXXX XXXX	Demandeur(e)(s) d'asile
Date(s) of Hearing	May 07, 2019	Date(s) de l'audience
Place of Hearing	Heard by videoconference in Calgary, Alberta and Vancouver, British Columbia	Lieu de l'audience
Date of Decision	May 10, 2019	Date de la décision
Panel	Preeti Adhopia	Tribunal
Counsel for the Claimant(s)	Dean Pietrantonio Barrister and Solicitor	Conseil(s) du (de la/des) demandeur(e)(s) d'asile
Designated Representative(s)	XXXX XXXX XXXX XXXX <i>for</i> XXXX XXXX XXXX	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	Amy Gelin (Documents Only)	Conseil du (de la) ministre

REASONS FOR DECISION

[1] This is the decision of the Refugee Protection Division (RPD) in the claim of XXXX XXXX XXXX XXXX as a citizen of Iraq who is claiming refugee protection pursuant to section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act* (the “Act”).¹ The claimant’s son, XXXX XXXX XXXX (the minor claimant), is a citizen of the United States and also claims refugee protection in accordance with the *Act*.

ALLEGATIONS

[2] The claimant is a 35-year-old Syriac Orthodox Christian from Mosul. She faced problems throughout her life on account of her religion. In 2003, she worked for a XXXX of the XXXX XXXX XXXX XXXX XXXX XXXX XXXX. Because of this and her religion, she received threats and harassment. In 2004, as a university student, she was also threatened, bullied and harassed due to her religion. In 2005, someone posted a note on her family’s door that stated “your daughters must marry Muslim men.” In 2007, the claimant moved to Dohuk in Kurdistan because of the threat against Christians and Yazidis in Mosul. From 2008 to 2011, the claimant attended university in Lebanon.

[3] In 2011, the claimant returned to Dohuk and started working for the XXXX XXXX XXXX XXXX XXXX XXXX XXXX. Initially, she worked in the XXXX department. In 2012, the claimant and her family moved to Erbil. In 2013, she became a XXXX XXXX XXXX. In 2015, when an ISIS sleeper cell was discovered in neighbourhood, her family moved to majority Christian area of Erbil. In 2017, another ISIS sleeper cell was found among students at the university. The general security situation in Erbil deteriorated.

[4] In XXXX 2017, the claimant married a man who had become a Dutch citizen in 2013. She continued to face mistreatment, particularly when travelling past checkpoints. In early 2018, she was travelling in a taxi while wearing a cross, when the driver stated that all Christians should be beheaded and he motioned his hand across his throat.

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[5] In XXXX 2018, the claimant left the country for the U.S., where the minor claimant was born. Her husband was unable to get an American visa, so he went to Canada instead. In XXXX 2018, the claimant and her son came to Canada to join him. She fears that if she returns to Iraq, she will face persecution and other risks due her religion.

DETERMINATION

[6] I find that the claimants are not Convention refugees as they do not have a well-founded fear of persecution related to a Convention ground in Iraq, or the United States in the case of the minor claimant. I also find that the claimants are not persons in need of protection, in that their removal to Iraq, or the U.S. in the case of the minor claimant, would not subject them personally to a risk to life or to a risk of cruel and unusual treatment or punishment. There are also no substantial grounds to believe that their removal to Iraq, or the U.S. as the case may be, would subject them personally to a danger of torture.

ANALYSIS

Identity

[7] The claimants' identities as nationals of Iraq, in the case of the claimant, and the U.S. in the case of the minor claimant, are established by their respective passports in evidence.² I am satisfied of their identities by these documents.

Credibility

[8] At the hearing, the claimant responded to questions posed to her in a direct and succinct manner. There were no material inconsistencies or contradictions between her testimony and the other evidence that were not reasonably explained. She also submitted evidence to corroborate some of her allegations. This includes: her national identity card and marriage certificate which identify her religion; her birth and baptism certificate; letters from the claimant's church in Iraq

² Exhibit 1.

and Canada confirming her membership; her XXXX XXXX identity card; an employment verification letter from the XXXX XXXX; her husband's Dutch passport; and proof of her husband's employment with the XXXX XXXX in Iraq.³ These documents establish that the claimant is Christian and was living and working for a XXXX XXXX in Iraq.

[9] The Minister intervened in this case by disclosing documents and making written submissions. The Minister argues that since the claimant's husband is a Dutch national, the claimant may have access to Dutch citizenship. According to the Minister, a Dutch citizen may sponsor their spouse for a residency permit which allows the spouse to live and work in the Netherlands. After five years of uninterrupted residence, the spouse may apply for permanent residence or citizenship. Since the claimant's son has a right to Dutch citizenship through his father, the claimant may also apply for residency as the parent of a Dutch national. After five years of continuous residency, she can apply for naturalization.

[10] The Minister argues that the claimant's failure to pursue status in the Netherlands undermines her credibility. Since the claimant married her husband in XXXX 2017, she had access to this option while still in Iraq. Rather than choosing this alternative, the claimant went to the U.S. where neither she nor her husband have access to residency. It is submitted that the claimant's failure to make a claim in the U.S. is evidence of a lack of subjective fear. The Minister finds that a genuine refugee would seek protection at the first opportunity. The Minister does not find it credible that the claimant would then opt to come to Canada, where neither she nor her husband or child have residency rights, rather than pursuing status in the Netherlands where her husband is a national and her son is entitled to citizenship. Another issue raised by the Minister is the claimant's reavilment to Iraq following trips to France, South Africa and her first trip to the U.S. The Minister suggests that the claimant's actions do not demonstrate subjective fear and instead reflect someone who is country shopping.

[11] In response to the Minister's arguments, the claimant maintains that she did not make claims in South Africa, France or the U.S. and instead reavailed herself to Iraq because she was unmarried and still living with her family during those work-related trips; tradition dictates that

³ Exhibit 4.1.

she remain with her family until marriage. Since her family could not leave with her, she felt she had a duty to return. She was married in XXXX 2017 and then moved into a separate home with her husband. She then had greater liberty to leave the country if the circumstances warranted it. The claimant testified that although she tolerated mistreatment in Iraq for many years, once she was pregnant and threatened with death by a taxi driver in early 2018, she became very fearful and promptly applied for a U.S. visa. She explained that she was too fearful to consider other possibilities in the moment. In the U.S., she had her in-laws to rely on for support, but had no such support system in the other countries to which she had travelled. Since she speaks English, there would be no language barrier for her in the U.S. She also explained that when her husband was unable to obtain a U.S. visa, she did not want to make an asylum claim there because she would not be able to be with him. Since he was able to get a Canadian visa, she opted to apply for refugee status here.

[12] The claimant further testified that there is no Dutch consulate in Iraq so to apply for a visa, she would have to travel to the consulate in Jordan first. Applying for an American visa through the consulate in Iraq was much easier. In terms of the claimant's ability to access Dutch residency and citizenship, she argues that in order for her husband to sponsor her for residency, he would first have to live and work in the Netherlands for one year and needs to earn about 1,600 euros per month. Since the claimant's husband has not lived in the Netherlands for several years because he was living and working in Iraq, this was not an option that could be executed quickly. Furthermore, the claimant would be required to take a civic integration test from abroad to demonstrate knowledge of Dutch language and culture. Finally, the claimant and her husband have no family support in the Netherlands.

[13] I find that the claimant's delay in departure, failure to claim elsewhere and reavilment were reasonable in the circumstances. I took into account that culture and patriarchy may have influenced the claimant's decision not to make a claim in other countries and to return to Iraq. I accept that an individual's duty to family and gender expectations can supersede one's experience of subjective fear. Furthermore, the claimant testified that her fear only crystalized in 2018. In the meantime, her family took steps to improve their security situation. They moved from Mosul to Dohuk in 2007 and then to Erbil in 2012. When security in their neighbourhood

deteriorated, they changed neighbourhoods in that city. When a taxi driver threatened to kill the claimant in 2018, it was the most serious personal threat she had ever experienced and her pregnancy heightened her fear. She decided to flee and was less encumbered in doing so because she had started a new life with her husband.

[14] I also do not find that the claimant's failure to pursue residency in the Netherlands undermines her credibility. The Minister's own evidence from the Netherlands' immigration department confirms that the claimant's husband would have to live in the Netherlands for one year before applying for residency for the claimant.⁴ However, he was living in Iraq and working for the XXXX XXXX and therefore was not in a position to do so. The evidence confirms that the claimant would be required to take a civic integration test before qualifying for residency.

[15] The claimant did not provide sufficient evidence to address why she did not pursue Dutch residency through her son. The Minister's evidence from the Netherlands' *Nationality Act* clearly indicates that a child born to a Netherlands national is also a Netherlands national. Thus, the minor claimant can assert his right to Dutch citizenship. The Minister also provided the conditions under which the parent of a citizen can apply for Dutch residency. I find no barriers for the claimant in this list of requirements. There is no indication that claimant would be required to take the civic integration test. It does not appear that the claimant or her son would be required to be living in the Netherlands for any amount of time beforehand and there are no employment or income requirements. The claimant did not adequately address this issue in her evidence.

[16] While it appears that there is the potential for the claimant to obtain residency in the Netherlands through her son, I do not find that her failure to do so is fatal to her claim. It is not unreasonable for the claimant to consider family support and language when choosing in which country to make an asylum claim. The claimant was pregnant when she fled Iraq and while she has no family support in the Netherlands and does not speak Dutch, her in-laws were living in the U.S. and she stayed with them when she arrived there. When her husband could not obtain an American visa, they had to look for other options. Choosing Canada instead of the Netherlands at

⁴ Exhibit 5.

this point seems questionable given that the claimant had time to consider her options while safe in the U.S. Whereas in Canada, neither she nor her husband and son have status, in the Netherlands, two of them do. As the Minister suggested, Canada seems like a riskier option for her family than the Netherlands. The claimant explained that she has relatives in Canada. However, I note that those relatives are in Toronto, not in Vancouver where the claimant resides.

[17] Even though the claimant failed to pursue residency in the Netherlands instead of coming to Canada, this does not negate her allegations against Iraq. Overall, the claimant gave clear and consistent evidence concerning her allegations. The subjective fear issues were reasonably explained or were not fatal to her claim because she was otherwise credible.

Well-Founded Fear of Persecution & Risk of Harm

[18] In his case, no allegations against the United States were advanced on behalf of the minor claimant. At the hearing, counsel for the claimants conceded that the minor claimant makes no claim against his country or citizenship. Given that there are no allegations against the U.S. from the minor claimant, I find that there is insufficient evidence that he faces a serious possibility of persecution, or a likely risk of harm within the meaning of 97(1) of the *Act*, if he returns to the U.S.

Internal Flight Alternative

[19] I find that the claimant could live safely, without experiencing a serious possibility of persecution or a likely risk of section 97 harm, by relocating to places such as Dohuk. There is insufficient evidence before me to demonstrate that Christians face treatment amounting to persecution or section 97 risks in this part of Kurdistan. Relocation there is also reasonable in the claimant's circumstances.

[20] The claimant moved to Dohuk in 2007 and is therefore familiar with it. In the claimant's BOC, she does not indicate that she experienced treatment that might rise to the level of persecution. Rather, she states that living there was difficult because she does not speak Kurdish.

She also indicates that she was discriminated against because she is Christian and was incorrectly considered to be an Arab. The claimant cites no specific mistreatment in her BOC. At the hearing, the claimant testified that she did not feel “comfortable” in Dohuk. When asked for specifics, she testified that “we faced harassment.” When asked to be specific again, she referred to being considered Arab and that there is hostility between Arabs and Kurds. She also testified that employment was difficult to obtain and there were difficulties when completing paperwork. On one occasion, she was discriminated against when applying for a job at the university. She testified that being forced to renew residency annually in Kurdistan made her feel like she was not a citizen and was instead a “stranger” in her own country. Finally, she testified that taxi drivers sometimes harassed her by holding up the Quran.

[21] I do not find that the claimant’s past experiences in Dohuk, even when considered cumulatively, rise to the level of persecution or section 97 risks. They do not reflect serious, sustained or systematic human rights abuses or violations of fundamental freedom. While the claimant may have been discriminated against when applying for employment, she ultimately found a job in Dohuk with the XXXX XXXX. Although harassment by cab drivers, renewing residency and difficulties with language and paperwork may be inconvenient and aggravating, it does not meet the threshold for persecution or section 97 risks. While a claimant is not required to have experienced persecution in the past to be a refugee, the claimant’s past experience in Dohuk suggests that she could live there safely in the future.

[22] Christians in Iraq have faced appalling human rights abuses and some of their towns are in ruins. The claimant submitted multiple reports about the devastation faced by Christians in the cities of Mosul and Nineveh. But, it is important not to conflate the conditions in the semi-autonomous region of Kurdistan with the situation in the rest of Iraq; Kurdistan’s trajectory, particularly as it relates to Christians, has not followed the same course as other regions of the country. For example, one source states, “If you are a Christian living in Ankawa (outside Erbil), you have generally been in a safe situation over the last 15 years.”⁵ Kurdistan has been described as possessing a “robust state of religious freedom” and being a “haven of religious freedom” where “religious groups have been targeted less frequently” and are “free to worship as they

⁵ Exhibit 3, National Documentation Package (NDP), Iraq, March 29, 2019, Item 1.23.

choose.”⁶ Christians from Iraq proper have typically fled *to* Kurdistan for safety over the course of the war,⁷ much as the claimant and her family did. Kurdistan experienced lower levels of insecurity than other regions of Iraq perhaps due to the greater capacity of the Kurdish security forces and the lower levels of ethnic and religious diversity in the region.⁸ Thus, I have given much less weight to the conditions for Christians in regions of Iraq outside Kurdistan or disputed areas in my analysis. In addition, when reviewing the objective country condition information, I have been mindful that there have been significant changes in the country over the course of the war; consider the gains and losses of vast territory by the Islamic State. Thus, I have relied more heavily on the more recent country condition documents in evidence in my analysis.

[23] By way of example of the issues raised above concerning Kurdistan’s unique conditions and the changes over time, the claimant relies on a UNHCR report in evidence that discusses violence against Christians.⁹ I find this 2012 report to be outdated. There have been significant changes in the country in the last seven years during which, for example, Mosul was captured by the Islamic State (IS) in 2014 and recaptured by the government in 2017. However, I note that even in 2012, this report makes the distinction between Kurdistan and the rest of Iraq in specifying that “the rights of religious minorities are generally respected and groups can worship freely without interference” in Kurdistan.

[24] A 2016 Response to Information Request (RIR) in evidence addresses the security situation in Dohuk.¹⁰ Sources therein describe Dohuk as “relatively safe,” “satisfactory” and “relatively stable.” It is also stated that the region became “safe” after U.S. coalition air strikes and the presence of Kurdish fighters. The RIR indicates that IS does not pose a danger in Dohuk because of the Kurdish security forces’ control of the region. Multiple experts consulted report that there have been no terrorist attacks there since early 2015. It finds that in many regions *except Kurdistan*, minority groups of any religion said they continue to experience violence and harassment from the majority group in the region. Sources relied on also report that “Christians live safely” in Kurdistan; there are no “systematic incidents” targeting Christians in Dohuk;

⁶ Exhibit 3, NDP, Item 12.11

⁷ Exhibit 3, NDP, Items 12.2 Response to Information Request (RIR) IRQ104716.E, 12.10, 12.11, 12.15, 1.7.

⁸ Exhibit 3, NDP, Item 1.19.

⁹ Exhibit 3, NDP, Item 1.7.

¹⁰ Exhibit 3, NDP, Item 12.6 RIR IRQ105461.E.

Christians can practice their faith “freely” in Dohuk; and Christians in Dohuk “enjoy good relations with Kurds.” The RIR goes on to state that the Kurdish government policy “has been to accommodate for minorities in an attempt to show its international (namely Western) allies that it can be a beacon of hope and a safe haven for minorities.”

[25] A report also issued in 2016 by the Home Office states that Kurdistan has “traditionally been a haven for religious minorities” and that authorities there “provide effective protection.”¹¹ As such, there were “relatively fewer reports [than those related to GoI] of official abuse and discrimination based on religious affiliation” in Kurdistan. Although there are reports of discrimination against Yezidis, Christians and Kakai, the Home office concludes that a person from a religious minority will not be at risk of persecution or serious harm in Kurdistan. It finds that relocation to Kurdistan for religious minorities is feasible and religious minorities do not face unreasonable difficulties in gaining access to the region.

[26] In yet another 2016 report, the Danish Immigration Service’s report finds that Christians do not need a residence card to pass through checkpoints and it may be easier for Christians to enter Kurdistan than it is for Arabs.¹² According to this report, the Kurdistan government “has been keen on showing that it protects minorities, especially Christians” and that Christians have a “stronger position” in Kurdistan than other minority groups

[27] The Middle East Research Institute’s 2017 report finds that Christians living in Kurdistan “fared better than those in the disputed territories.”¹³ It maintains that Christians have been “better protected by legal provisions and enjoyed equal business and employment opportunities,” notwithstanding grievances over land ownership and development issues.

[28] The 2018 Department of State report reveals that whereas there were continued reports of societal violence by sectarian armed groups in many parts of the country, there are “few reports of religious violence” in Kurdistan.¹⁴ This document also states that some Christians reported

¹¹ Exhibit 3, NDP, Item 1.21.

¹² Exhibit 3, NDP, Item 1.18.

¹³ Exhibit 3, NDP, Item 12.16.

¹⁴ Exhibit 3, NDP, Item 12.1.

harassment and abuses by the Peshmerga and Asayish which impeded movement from Dohuk to Sinjar. However, it finds that *except* for Kurdistan, minority groups of any religion report violence and harassment in Iraq.

[29] The Australian Department of Foreign Affairs and Trade's 2018 report maintains that "violence against Christians in the Kurdistan Region is less common, but Christians in the region continue to face discrimination in the form of intimidation and denial of access to services."¹⁵

[30] The Home Office states in its 2019 report that Christians are generally permitted entry to Dohuk without pre-existing residence documents or a sponsor.¹⁶ This is because access permissions consider the "ethnosectarian background" of returnees, which means that minorities are generally admitted to Kurdistan.¹⁷

[31] The evidence reveals that the situation in Dohuk is secure for Christians. This is not to say that the conditions are perfect, as Christians are likely to face discrimination, but I find insufficient evidence to demonstrate that Christians would face treatment amounting to persecution or that would put them at a likely risk of section 97 harm.

[32] I also find that relocating to Dohuk is reasonable in the claimant's circumstances. The Commission on International Religious Freedom finds that rule of law is "strong" in Kurdistan.¹⁸ It states that the Kurdistan Regional Government "makes special efforts to provide for Christians" and displaced individuals have been "well provided for, with Christians receiving better care than many others thanks to the support networks organized by local and international churches." Christians also do not require a residency permit any longer, which was of concern to the claimant.¹⁹ Also, the claimant is not an Internally Displaced Person (IDP) as traditionally defined in that she was not forced to flee her home in one region of Iraq and move to another due to the conflict. Rather, she would be relocating from Canada. There is not sufficient evidence to

¹⁵ Exhibit 3, NDP, Item 1.19.

¹⁶ Exhibit 3, NDP, Item 1.14.

¹⁷ Exhibit 3, NDP, Item 2.1, 2.9.

¹⁸ Exhibit 3, NDP, Item 12.11.

¹⁹ Exhibit 3, NDP, Item 14.5.

indicate that she would be forced to live in a refugee camp as opposed to finding her own housing. However, even for IDPs, Refugees International finds that:

Those IDPs who were able to enter and remain in the Kurdistan Region of Iraq (KRI) – currently estimated at 840,000 –have been arguably more protected and better served than those who landed in central and southern Iraq. Humanitarian agencies have better access to vulnerable populations in the KRI due to the more stable security conditions and a regional government that has been more willing to facilitate the work of international and local aid groups than the central government in Baghdad.²⁰

[33] There is evidence that Christians may face some economic disadvantages in Kurdistan.²¹ For example, finding employment can be challenging, though I note that the claimant was able to secure employment there in the past. Also, whereas poverty rates are high in the rest of Iraq, this is not the case in Kurdistan.²² According to the UNHCR, the overall housing situation in Dohuk is “relatively optimal as 94% of the total households in urban areas, on average, live in either individual houses or apartments” as opposed to temporary shelters and unfinished buildings.²³ It also states that health care access is rated well by refugees, IDPs and the host community.

[34] I also considered the Gender Guidelines and find that whereas it may be unreasonable for a lone, single woman to relocate and live alone, this is not the case for the claimant as she would be relocating with her husband. There is insufficient evidence to indicate that non-domestic gender-based violence is systematic or at a level that would render relocation unreasonable. The Home Office concludes that it would not be “unduly harsh” for a woman fearing persecution to relocate.²⁴ The claimant is also highly educated, young and fit with consistent employment experience in Kurdistan. The vast majority of the unemployed in Dohuk have very low or no education and most women are illiterate.²⁵ As such, I find it likely that the claimant has some advantages in pursuing employment. Insufficient evidence was raised by the claimant to suggest that it would be unreasonable for the claimant to relocate. An IFA is therefore reasonable.

CONCLUSION

²⁰ Exhibit 3, NDP, Item 14.4.

²¹ Exhibit 3, NDP, Item 12.11.

²² Exhibit 3, NDP, Item 1.19.

²³ Exhibit 3, NDP, Item 14.9.

²⁴ Exhibit 3, NDP, Item 1.22.

²⁵ Exhibit 3, NDP, Item 14.9.

[35] Having considered all of the evidence, I find that the claimants are neither Convention refugees as set out in section 96, nor persons in need of protection within the meaning of subsection 97(1) of the *Act*. Their claims are therefore denied.

(signed)

“Preeti Adhopia”

Preeti Adhopia

May 10, 2019

Date