

**PURSUANT TO S 129T IMMIGRATION ACT 1987, ORDER PREVENTING  
PUBLICATION OF NAMES OF THE APPLICANTS, OR PARTICULARS  
CAPABLE OF LEADING TO THEIR IDENTIFICATION**

**IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY**

**CIV 2004-404-6314**

BETWEEN                      A & ORS  
   Applicants

AND                              THE CHIEF EXECUTIVE OF THE  
   DEPARTMENT OF LABOUR  
   First Respondent

AND                              THE REFUGEE STATUS APPEALS  
   AUTHORITY  
   Second Respondent

Hearing:            13 & 14 April 2005

Appearances: Mr Ryken & Mr Joseph for A and Ors  
                         Mr Woolford for Respondents

Judgment:        19 October 2005

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**JUDGMENT OF WINKELMANN J**

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*This judgment was delivered by me on 19 October 2005 at 2.15 pm pursuant to Rule 540(4)  
of the High Court Rules.*

*Registrar/ Deputy Registrar*

Ryken and Associates, Auckland  
Meredith Connell & Co, Auckland

## **Introduction**

[1] The applicants in this proceeding are A and his family. A is a Shi'a cleric. Although born in Iraq, he and his family have spent the last 20 years living outside that country, predominantly in Iran. In 2002 they arrived in New Zealand, and now seek refugee status to enable them to remain. A's family's claim to refugee status is through A.

[2] The Refugee Status Appeals Authority found that A and his family did not have a well-founded fear of being persecuted in Iraq, or that there was no Convention reason for any harm that A might face. A and his family were therefore not refugees within the meaning of Article 1A(2) of the Refugee Convention. Refugee status was declined. The Authority issued a separate decision in respect of the fourth applicant Y, who is the son of A. Y claimed refugee status through his father, but also had additional grounds advanced on his behalf. Again, refugee status was declined.

[3] The applicants seek judicial review of the decision of the Authority in respect of A and family and the respondents accept that if that decision is successfully challenged, then the decision in respect of Y must also fail because of the extent to which the decisions are connected.

[4] The applicants claim that the Authority's finding that none of the applicants had a well-founded fear of persecution was unreasonable. Although many arguments were advanced in support of this proposition, the two principal issues that emerged from argument were:

- a) Whether the Authority failed to consider a relevant consideration, namely the prospective risk for a senior Shi'a cleric having the characteristics of A, on returning to Iraq?
- b) Whether the Authority took an unreasonable view of facts, namely whether A's writings were disseminated in Iraq, and the meaning of

information contained within two reports on Iraq by Amnesty International?

### **Basis of the application for refugee status**

[5] A is a senior Shi'a cleric, scholar and religious teacher and a former member of the Supreme Council for the Islamic Revolution in Iraq (SCIRI). Because of all of these matters A says that on his return to Iraq he would be a high profile Shi'a cleric who could well be targeted by Sunni militants as well as some Shi'a factions.

[6] Although the transcript of the hearing before the Authority was not before me, both counsel were content to proceed without it. The Authority accepted A's evidence as to his background, the positions he has held and his accomplishments. It also accepted his account of how he and his family arrived in New Zealand. I therefore set out that background as accepted by the Authority.

[7] A lived in Iraq as a young man and studied at an educational institute in the city of Najaf. Whilst working at that college he began scholastic theological writings during the late 1970s when he developed a reputation as a writer of theological essays and articles. His first book was published in Lebanon. He believes that it was disseminated in Iraq but not under his own name. His writing was theological writing rather than political.

[8] He continued to write while in Iran. His books are widely known within the Islamic world and some may have been distributed in Iraq. One of his most recent works is controversial because it calls into question the analysis of Sunni scholars in relation to a matter of theology.

[9] The detention of some of his friends and acquaintances in the pervasive atmosphere of oppression in Iraq began to erode A's confidence. He started to think about leaving in 1978, by which time he had married. He paid a bribe to obtain an exemption from military service, which in turn enabled him to obtain a passport. He left Iraq with his wife and young family some time later. Arriving in Syria, A learnt

that other members of his extended family had relocated to Iran. He followed suit, settling in Tehran with his family in 1980.

[10] Once in Iran, he and his family exchanged their Iraqi passports for Iranian green cards. A obtained work as a religious leader, and once they were of age his sons were able to commence and complete their schooling.

[11] A was provided with appropriate travel documents which he used to make several trips out of Iran including humanitarian trips to Kurdistan after the uprising during the early 1990s, on behalf of a charity with which he was involved. He also travelled overseas on pilgrimage and, in latter years, he took trips to various conferences.

[12] A made contact with the Islamic Activity Organisation (IAO) after reaching Tehran. He accepted a position in the IAO Council. He was responsible for media issues and publication. Some time after the outbreak of war between Iran and Iraq in 1980, the IAO metamorphosed from an organisation founded on promoting Islamic culture and teaching into an organisation focused on political opposition to the Ba'athist government in Iraq.

[13] This process of change coincided with the emergence in Tehran of the SCIRI which was formed in order to provide a united voice for Iraqi opposition parties in exile. The IAO soon came under the umbrella of SCIRI, along with many other Iraqi organisations in Iran.

[14] The ultimate aim of the SCIRI was to establish an Islamic government in Iraq. However, A's views were at odds with others in the SCIRI on that. He was aligned with a strand of Islamic scholarship ('the quietus school') which did not agree that national governments should necessarily be formed under an Ayatollah. His preferred approach was more inclusive. He believed that the Iraqi people should be free to choose their form of government rather than have an Islamic state forced upon them. This did not place him under any threat however and it also did not prevent him from securing a senior role within SCIRI. He worked full time for SCIRI from the mid-1990s.

[15] Ultimately A decided to leave Iran. He was becoming increasingly dismayed by the Iranian regime and he was subjected to harassment by its security forces because of his democratic preferences. He also feared for the future of his outspoken son, Y, who was detained after attending a student demonstration in the late 1990s. A was concerned that Y might attract further problems if Y continued to voice his opinions about the Iranian government. Further A believed that his own activities with the IAO and SCIRI precluded a safe return to Iraq, as at that time Saddam Hussein and his regime remained in power. A and his family obtained false passports and travelled to New Zealand, where they arrived in August 2002.

[16] The factual material set out by the Authority does not mention that A is a senior Shi'a cleric although that matter was plainly before the Authority and was relied upon by counsel for A and his family in written submissions. Mr Woolford accepts that A is to be regarded as a Sheikh or Hojjatul. A Hojjatul is a very senior Islamic cleric.

### **The Authority's decision**

[17] The Authority commenced its consideration of the appeal by recording that there was no basis upon which the Authority could reject any key part of A's account and therefore that it was accepted in its entirety. The Authority described the evidence given by A as cogent and understated and as bearing "no obvious signs of exaggeration". The Authority directed itself in terms of the Inclusion Clause in Article 1A(2) of the Refugee Convention 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.

[18] The Authority then described the principal issues as:

- a) Objectively, on the facts as found, was there a real chance of A being persecuted if returned to the country of nationality; and

- b) If the answer is “yes”, was there a Convention reason for that persecution?

As to the deliberative approach adopted by the Authority, the Authority said:

The appellant fears returning to Iraq for a number of reasons. We will assess each reason separately, before considering the cumulative effect of our objective findings.

[19] It then proceeded through the matters advanced on behalf of A as grounds for his fear of being persecuted in Iraq. These matters and the Authority’s findings are set out below.

*Whether A was at risk from Saddam Hussein or the Ba’athist regime:*

[20] The Authority noted that because of supervening events in Iraq, A’s reasons for claiming refugee status had changed. Accordingly, A’s fears that he might face problems from Saddam Hussein or the Ba’athist regime were “now remote, at best, if it had ever existed”

*Instability in Iraq:*

[21] The Authority accepted that outbreaks of violence in Iraq are common place, many of them are serious. However, it said:

Civil unrest and generalised violence do not, without more, provide a basis upon which refugee status is declared. It is necessary to determine whether there is a real chance the appellant will be persecuted if he were to return to Iraq and, if so, whether that persecution is for a convention reason.

*Whether Shi’a Clerics are at risk:*

[22] In relation to this point the Authority found that while A was a Shi’a cleric; he was not by that reason alone, at risk of being persecuted for a Convention ground, at least at the real chance level. The Authority said it was:

not aware of any contrary information which suggests that Shi’a clerics are being attacked or killed in numbers which would suggest the appellant is at risk by virtue of his clerical status alone.

*Whether A was at risk because of association with SCIRI:*

[23] The Authority was satisfied that A's past contribution to SCIRI seemed to be low key and behind the scenes. They therefore found that A had not established that there was a real as opposed to a remote chance that he would be targeted on return to Iraq for that reason, although accepting that some reports disclosed that some members of SCIRI had suffered in the violence which pervades Iraq.

*Whether A was at risk because of his theological writing:*

[24] The Authority found:

Even if aspects of his work were to be theologically controversial to some elements in the Sunni community, it is speculative to assert that he would face a risk of being targeted by them because of a text, the publication of which he could not even confidently attest to.

*Risk to Shi'a generally:*

[25] The Authority accepted that there was evidence of violence targeting Shi'a including the bombing of a news agency in April 2004. However, it concluded:

The fact that such threats had been made is in itself unhelpful in terms of assessing the risk to the appellant. The general nature of the threats reported suggested broad offensive, rather than a campaign which might specifically target the appellant or any members of his family. In that context it must also be remembered that Shi'a make up some 60% of the population in Iraq.

*Risk from Iran:*

[26] A did not pursue before the Authority his claimed fear that elements in Iran might pursue him to Iraq because of the views which he had expressed as a member of SCIRI in Iran.

*Whether A was at risk because of prolonged absence from Iraq:*

[27] The Authority rejected counsel's submission that returning to Iraq after a long absence would create problems for A which amounted to persecution. It

observed that his long absence is typical of many others who left Iraq to live in Iran and who have now returned since the fall of the Ba'ath regime.

*Summary:*

[28] The Authority then concluded:

The Authority accepts that the appellant fears harm for a number of reasons. However, we find that, even considered cumulatively, such fears have no objective basis; or that the chance of serious harm occurring to the appellant is remote or speculative, rather than a real chance, or that there is no convention reason for any harm that he might face.

**Approach on Judicial Review**

[29] Counsel for the applicants points to a body of case law in the United Kingdom and New Zealand which he submits supports a less deferential approach on judicial review than is dictated by application of the *Wednesbury* principles, particularly in cases affecting the human rights of an applicant. The “adequate consideration” or “hard look” approach to judicial review has been discussed or applied (sometimes without discussion) in a number of cases involving human rights: see for example *Pharmaceutical Management Agency v Roussel Uclaf Australia Pty Ltd* [1998] NZAR 58, 66; *Thames Valley Electric Power Board v NZFP Pulp & Paper Ltd* [1994] 2 NZLR 641 (CA); *Daly v Secretary of State for the Home Department* [2001] 2 AC 433, 445; *Ex parte Turgut* [2001] 1 All ER 721 (CA); *Wolf v Minister of Immigration* [2004] NZAR 414; *Thompson v Treaty of Waitangi Fisheries Commission* (CA 247/03, 15 June 2004); *K v Refugee Status Appeals Authority*, HC Auckland, M1586-SW99, 22 February 2000, Anderson J.

[30] I am satisfied that the time has come when the *Wednesbury* test of ‘unreasonableness’ is no longer to be regarded as the invariable or universal test in New Zealand public law. The intensity with which a Tribunal’s decisions are scrutinised will vary according to the subject matter in hand. I respectfully agree with Wild J’s useful observations in *Wolf v Minister of Immigration*.

[31] Counsel for the respondents concedes that there is a body of case law which supports this view. However he also submits that it is important to bear in mind that:

- a) This is a judicial review proceeding and that there is no general right of appeal from a decision of the Authority. The Court must guard against an appeal being advanced through the guise of judicial review.
- b) The specialist nature of the Authority's jurisdiction should constrain the Court in exercising its power to review.

[32] I accept these points and bear them in mind. As was said in *R v Immigration Appeal Tribunal Ex Parte Syeda Khatoon Shah* [1997] Imm AR 145 (CA) at 153:

In this highly specialised field of adjudication, a great deal depends upon the expertise of the [Authority] itself. Its adjudication is not a conventional lawyer's exercise of applying a legal litmus test to ascertain the facts; it is a global appraisal of an individual's past and prospective situation in a particular cultural, social, political and legal milieu, judged by a test which, though it has its legal and linguistic limits, has a broad humanitarian purpose.

[33] Where the decision under review is one affecting such fundamental human rights as the right to be free from persecution, I am satisfied that a reviewing court should look at an impugned decision with great care.

**First Issue: Whether the Authority failed to consider relevant consideration, namely the prospective risk for a senior Shi'a cleric having the characteristics of A, on returning to Iraq?**

[34] The principal argument advanced by the applicants in support of their application for review is that the Authority did not address itself to the ground upon which A claimed refugee status. The applicants say that they have a well-founded fear of being persecuted in Iraq on Convention grounds. They say that A is a high-profile Shi'a religious leader who has written numerous books dealing with a theological subject matter. He is likely to be regarded as a leader needing to be suppressed by opposing Sunni extremists determined to destabilise Shi'a society, or by other Shi'a factions opposed to his actual or inferred position.

[35] Mr Woolford responds that before the Authority the burden lay with A to establish that he would be a high-profile individual and that he failed to do so. He submits that the Authority's approach to this was correct. It looked at each characteristic of A that was said to make him high-profile, and then considered that material cumulatively.

[36] I am not satisfied that the Authority did consider whether an individual having all of the characteristics of A would likely be a high-profile individual who would likely attract persecution on his return.

[37] There are two significant errors in the deliberative process the Authority undertook. First, the Authority addressed itself separately to the risk attaching to each of A's individual characteristics which were accepted by the Authority. It satisfied itself that each individual risk did not reach the level of a real chance of harm. It seems then to have added those risks together; that is to say considered the "fears" cumulatively. This exercise undertaken by the Authority is a different exercise than considering whether a person, having *all* of the characteristics of A, would face a real chance of harm.

[38] The manner in which the Authority expressed itself is not without difficulty, and the issue is one of some subtlety. Even if the Authority did take a holistic view of A, this is expressed in one sentence in a "summary" section of the decision: see [28] above. It was the cumulative view of A that should have received the most attention and consideration from the Authority. The focus should have been whether an individual having *all* of A's characteristics would face a real chance of harm for Convention reasons on return to Iraq.

[39] I am satisfied that the Authority's failure to address itself to the basis upon which refugee status was claimed was a significant defect in the deliberative process sufficient to amount to an error of law (see *Mohajerpour v Canada (Minister of Citizenship & Immigration)* (2001) 13 Imm LR (3d) 285, 287.

[40] Secondly, the Authority did not address itself to the significance of A's status as a senior cleric. Mr Woolford did not dispute that A is a Sheikh or Hojjatul, or that

a Hojjatul is the second most senior Shi'a religious position. It was submitted before me (as it had been before the Authority) that if A were attached to a religious institution he would be known as "Ayatollah".

[41] There is no consideration or mention in the Authority's decision that A is a very senior Shi'a cleric. As a consequence there is also no apparent consideration by the Authority of the evidence before it as to the risk to A as a leading citizen and in particular a high profile Shi'a cleric. I am satisfied that this is a significant omission because it was A's case that his seniority increased his profile and hence the risk to him and his family.

**Second Issue: Whether the Authority took an unreasonable view of the facts, namely whether A's writings were disseminated in Iraq, and the meaning of information contained within two reports in Iraq by Amnesty International?**

*Amnesty International Reports:*

[42] Amnesty International produces reports on an annual basis for countries suffering human rights abuses. Those reports are summaries, and cover in a few pages what is usually a complex situation in the subject country. In relation to Iraq, the 2004 Amnesty International Report covering events in Iraq, from January - December 2003 ('the AI report') contained the following statements:

**Human rights abuses by armed groups**

From May onwards there was an increasing incidence of attacks by armed groups on US military targets, Iraqi security personnel, Iraqi-controlled police stations, religious leaders and buildings, media workers, NGOs and UN agencies. These resulted in the death of hundreds of civilians, including foreign nationals.

- In August the UN headquarters in Baghdad was bombed, killing 22 people including Sergio Vieira de Mello, the UN Special Representative in Iraq. In September a bomb attack killed the bomber and a security guard, and injured 19 others, near the UN headquarters.
- Ayatollah Muhammed Baqer al-Hakim, Head of the Shi'a Muslim Supreme Council for the Islamic Revolution in Iraq, and 9-80 other people were killed in a car bomb attack in August in al-Najaf. At least 240 people were injured.

- In September Aqila al-Hashimi, a woman member of the Iraqi Governing Council, died in hospital a few days after her car came under fire in Baghdad.
- In September UK national Ian Rimell, an employee of the Mines Advisory Group, was killed in his car near Mosul.
- In October a bomb attack on the headquarters of the International Committee of the Red Cross (ICRC) killed 12 people and injured at least 15.

[43] A subsequent Amnesty International report issued on 18 March 2004 incorporated some of the same material. In a section entitled “background” the report said:

AI repeatedly called on the occupying forces, as a matter of urgency, to enforce law and order until Iraqi police forces could operate effectively, and expedite the creation of an Iraqi police force.

Some progress in this direction has been made since the early months of the occupation, particularly in the south of Iraq. Iraqis interviewed by AI delegates in February and March 2004 in Basra and Amara, the two governorates under the control of British troops, said the general situation had improved, although lack of security was still a major concern. Members of religious minorities, such as Sunni Muslims, Christians and Sabean/Mandeans, felt they were being targeted for attacks and other abuses.

Elsewhere in Iraq, however, violence and insecurity continue to dominate daily life. Attacks on Iraqi police stations and Coalition Forces have steadily mounted. Most have taken place in central and northern Iraq, as well as in Baghdad, and have resulted in hundreds of deaths, mostly of Iraqis but also of US and other nationals.

[44] Later in a different section of the March report there appears the following passage:

**Killings by armed individuals**

On 2 March 2004, bombs exploded in a Shi’a mosque in the Kadhimiya neighbourhood of Baghdad and in the Shi’a holy city of Karbala within seconds of each other, killing around 170 civilians and injuring 500, almost all of them Shi’a Muslims. The attacks appeared to have been carefully planned: a combination of suicide bombs, planted explosives and possibly mortar fire. (5)

A month earlier, 101 people died as two suicide bomb attacks ripped apart offices of Kurdish political parties in the northern city of Arbil.

These bombings were just two of the more recent attacks, apparently carried out by armed groups, that have been a growing feature of life in Iraq since the occupation began. The attacks have targeted the US military, Iraqi

security personnel, Iraqi-controlled police stations, religious leaders and buildings, media workers, non-governmental organizations and UN agencies. They have resulted in the deaths of hundreds if not thousands of civilians.

...

The following list highlights a few attacks. In not one of these cases have the perpetrators been brought to justice.

Amnesty International – Library – Iraq: One year on the human rights situation remains...Page 5 of 11

- On 7 August 2003, 17 people were killed when a truck exploded outside Jordanian embassy in Baghdad
- On 19 August, 22 people were killed, including UN envoy Sergio Vieira de Mello, by truck bomb on the UN headquarters in Baghdad
- On 29 August, 83 people were killed, including Shi'a leader Ayatollah Mohammad Baqer al-Hakim, by a car bomb at the Iman Ali mosque in Najaf
- On 17 October, 35 people were killed in four bomb attacks in Baghdad targeting the Red Cross and police stations
- On 18 January 2004, 25 people were killed, most of them Iraqi civilians, in a car bomb attack outside US headquarters in Baghdad

[45] The applicants relied upon this and other information put before the Authority as material evidencing the existence of a significant risk to high-profile senior Shi'a clerics. The Authority did not accept that the reports assisted the applicants (although not addressing itself to the risk to senior Shi'a clerics). It said:

While the Amnesty International AI Report: Iraq (2004) (the AI report) also refers to an increased incidence of attacks on religious leaders during 2003, (p 3) it does not suggest that the religious leaders at risk are necessarily Shi'a. Further, the only religious leader actually named was Ayatollah al-Hakim.

The reference in the AI report also needs to be read in the context of a subsequent Amnesty International report, Iraq: One year on the human rights situation remains dire (18 March 2004) AI Index: MDE 14/006/2004, which outlines the concerns of religious minorities who felt that they were being targeted for abuse. The first point to note is that Shi'a Muslims are not in the minority in Iraq. Further, while repeating the reference to attacks on religious leaders and buildings made in its Report 2004, the latter AI report again names only one Shi'a cleric, Ayatollah al-Hakim.

In summary, while the Authority accepts that the appellant is a Shi'a cleric, we find that he is not, by that reason alone, at risk of being persecuted for a Convention ground, at least at the real chance level.

[46] The applicants say that the Authority took a view of the country information contained in the Amnesty International reports that no reasonable Authority could have taken. The applicants say that the key portion of the March 2004 report referring to religious leaders was not about minorities. Further it was wrong of the Authority to attach significance to the fact that both Amnesty International Reports named only one Shi'a cleric who had been attacked (Ayatollah al-Hakim) because the list of incidents are plainly only given as examples, and chosen because they involved significant loss of life and could therefore properly be characterised as atrocities.

[47] Mr Woolford, for the respondents, submits that the Authority did not express itself clearly in the relevant passage of its decision, but says that what it intended to convey was that the group "religious leaders" identified by Amnesty International is potentially a very large group, so that to read the report sensibly as evidencing a risk to A, A would have to show why he would be a religious leader who would be targeted. He could show that by showing he was a minority religious leader.

[48] I am unable to give the relevant passage of the Authority's decision the reading Mr Woolford contends for. The Authority clearly links the two passages in the March 2004 report. I am also satisfied that the Authority acted unreasonably in doing so, there being no basis for reading the second passage relied upon by the applicants as addressing only the position of minorities. Indeed, the content of the second passage is inconsistent with that reading.

[49] Further, the reading of the Amnesty International reports is inconsistent with the other material the Authority had before it. The Home Office Report (April 2004) records:

According to the CPA, some 1,000 Iraqis, many of whom were leading citizens have been assassinated since May 2003. An Al-Jazeera report on 30 March 2004 stated that more than 1,000 leading Iraqi professionals and intellectuals had been assassinated in the preceding year.

[50] Later in that report when addressing the position of Shi'a Arabs, the report writers referred to the bomb attack which killed Ayatollah al-Hakim and said:

Such an attack had been anticipated by the SCIRI source in Damascus and a diplomatic source speaking to the joint UKI Danish Fact Finding Mission in July 2003, both of whom believed that high-profile Shi'a might be targeted by remnants of the former regime.

[51] Mr Woolford also submitted that the Authority was entitled to conclude that the references to "attacks on religious leaders" really only meant the particular instances listed in the report. I accept the applicants' argument that the Authority was wrong to conclude on the basis of the list of Shi'a clerics who had been killed contained within the Amnesty International report, that there was no real chance of A being targeted because he was a Shi'a cleric. The list was expressly not an exhaustive list of attacks, and listed only some of the worst incidents. Indeed the Home Office Report said:

A year after the war began, Iraqi civilians are still being killed every day. The worst incidents receive some international coverage but many simply go unreported. Often the assailants are unknown...

[52] I am therefore satisfied that the inferences drawn from the Amnesty International report were unreasonable. The Authority's interpretation of the two Amnesty International reports has the effect of minimising the significance and the risk to religious leaders, referred to in those reports and elsewhere in the material before the Authority. This difficulty is compounded by the Authority's failure to address itself to the position of Shi'a religious leaders, since that is what A is, rather than Shi'a clerics only. I have no doubt that the Authority's interpretation of the Amnesty International reports significantly coloured its finding that there was no risk to A at the level of a real chance.

*Publication of Theological Writing:*

[53] The Authority found that although A had written many texts and articles and that his most recent text was one with which some Sunni might take issue, "the contents of these collected writings have not brought him notoriety to the point where he would be targeted upon his return to Iraq". It acknowledged that a synopsis of his most controversial work had been published on the internet on a Iraqi-based website but noted that the premises from which the site was published had been bombed so that the site was inoperative at the time of the hearing.

Although the synopsis of his latest text was published on the internet the Authority said there was no evidence of how widely available the synopsis had been in Iraq.

[54] The Authority note that A's evidence about the extent to which his written works had been disseminated throughout Iraq was vague, and concluded that the existence of the controversial text did not give rise to a risk of A being targeted.

[55] The applicants say first that the Authority took an unreasonable view of the facts because evidence that the synopsis was widely available in Iraq, was in itself sufficient evidence that it had been widely disseminated. Further, the Tribunal had evidence before it of a print out of the website on which the synopsis was published. The Authority was incorrect when it said that the site had been bombed. It was another site which had been bombed. At the time of the hearing the site was operative.

[56] The respondents say that A had the onus of demonstrating significant risk to him because of his theological writing, but he failed to do so. He was unable to produce any responses, considered or otherwise, by Sunii writers.

[57] As I have already held that there are reviewable errors in the Authority's decision I do not propose to express a view upon this final matter. It is apparent that there was some factual confusion before the Authority at the time of hearing as to what websites were operating, and this probably impacted upon the Authority's view of distribution.

## **Conclusion**

[58] The Authority failed to address the ground upon which refugee status was claimed for A and his family, namely that as a high profile Shi'a cleric with *all* of his particular characteristics, there was a real chance of persecution of A and his family on return to Iraq. Also, it failed to address at all the significance, if any, that A was a senior Shi'a cleric.

[59] The Authority's interpretation of the Amnesty International Country information was unreasonable. This compounded the other errors identified and would have sufficiently coloured its evaluation of the risk. In all the circumstances I am satisfied it is appropriate to exercise my discretion to grant relief.

[60] The decisions in respect of A and his family (including Y: see (3) above) are accordingly quashed and the matter remitted to the Authority for re-hearing and reconsideration in light of this judgment.

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Winkelmann J