

Heard at Field House
On 11 November 2004

MA (Iraq – Fayli Kurds) Iraq
[2005] UKIAT 00022

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

28th January 2005

Before:

**Mr D K Allen – Vice President
Mr R A McKee
Mrs L H S Verity**

Between

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

DETERMINATION AND REASONS

1. The Appellant is a citizen of Iraq who appeals to the Tribunal with permission against the determination of an Adjudicator, Mrs N Bircher, dismissing his appeal against the Secretary of State's decision of 14 June 2001 issuing directions for his removal from the United Kingdom and refusing asylum.
2. The hearing before us took place on 11 November 2004. Mr C Williams for the IAS appeared on behalf of the Appellant, and Mr J McGirr appeared on behalf of the Secretary of State.
3. The Appellant is an Iraqi national who, and more specifically, is a Fayli Kurd and a Shia Muslim. He claims that in 1980 the government of Saddam Hussein expelled him and his family from Iraq and they went to

Iran. He claimed to have been arrested twice by the Iranian police in 1994 because he was an Iraqi Fayli Kurd and detained on each occasion for a week and physically assaulted. He worked at a printing business and claims that he experienced particular problems in October 2000 when the security forces raided the business and he was told that it was done because the business was secretly printing material relating to Christianity. He went into hiding and stayed with an Iraqi friend and left Iran on 30 October 2000 and came to the United Kingdom.

4. Removal directions were set for Iraq and therefore the Adjudicator properly concentrated on risk on return to that country. The Appellant said that he has had no contact with any members of his family since he left Iran. The Adjudicator accepted that he and his family had been forced to leave Iraq but did not believe that he was subjected to the treatment which he claimed to have been subjected to while in Iran. At paragraph 16 she concluded that since Saddam Hussein's regime had fallen the Ba'ath Party no longer existed, the majority of its members having fled and the services, had been restored in such cities as Mosul and Kirkuk, and there was a continued presence of Allied Forces in Iraq which would provide a sufficiency of protection to the Appellant. She gave brief consideration to objective evidence concerning the general situation particularly with regard to the Kurds in Iraq.
5. In the grounds of appeal it is contended that the Adjudicator did not give proper consideration to risk on return to Iraq for the Appellant as a Fayli Kurd. Reference is made to aspects of the objective evidence and it is contended that although the Ba'ath Party no longer rules, the Appellant is at risk on return.
6. At the hearing before the Tribunal on 25 August 2004 it was stated on behalf of the Appellant that he wished to argue that he was not an Iraqi and could therefore not be returned to Iraq. The Presenting Officer had had no notice of this point and it was therefore appropriate for the appeal to be adjourned, with directions being made firstly that the Appellant's representatives within ten days should serve amended grounds of appeal setting out any arguments they wished to raise with regard to the Appellant's nationality or the removal directions attaching any supporting documents and thereafter a skeleton argument was to be served by the Respondent.
7. The latter directions were not complied with, but we do have the benefit of the amended grounds of appeal in which it is contended firstly that the Adjudicator over-simplified the issue of the Appellant's problems being resolved by the downfall of the Ba'ath Party, and making the point that Fayli Kurds were stripped of Iraqi citizenship when they were forced to flee Iraq and the law that stripped them of their citizenship was still in force. It is also contended that the Coalition Provisional Authority in the Interim National Government has no power

to reinstate Iraqi citizenship as the source of their powers does not extend to grants of citizenship. It is also contended that the purported attempt made by the Coalition Provisional Authority law to reinstate Iraqi citizenship is not yet effective because this has to be done by the National Assembly which will not be constituted until 2005.

8. Mr Williams relied on the amended grounds of appeal. Coalition regulations stated that the National Assembly would be in power to grant citizenship but that was currently an aspiration and whether or not it would occur was imponderable. He referred us to paragraph 6.102 of the October 2004 Country Report which was concerned with the situation of the Fayli Kurds. Mr Williams had undertaken extensive internet searches in regard to Fayli Kurds in Iraq but there was no current information. It was unclear what procedures were to be followed in order to obtain Iraqi nationality. He did not think that conquest would change the matter but that it needed to be in the regulations.
9. As regards the Dutch report referred to in paragraph 6.102 of the Country Report, it was unclear how the Fayli Kurds referred to had returned from Iran but they had probably drifted over the border after the war and it was unlikely that they had returned by air to Baghdad Airport as would be the case for the Appellant were he to be returned. They were unlikely to have passports, there was no government and therefore no presumably no consulates for example in Iran. He referred us to page 3 of the bundle. They had had their property confiscated and they had been stripped of Iraqi citizenship and were now a minority in Iraq as so many had been deported and also the fact that they were Shia rather than Sunni raised a problem if they lived in the KAA, as most people there were Sunni.
10. Mr Williams also referred us to paragraph 6.79 of the Country Report and the UNHCR comment that most people who had opted for repatriation have returned to areas where their ethnic or religious groups constitute a majority. It could be inferred that the best chance of survival was on that basis rather than as in the case of a Fayli Kurd as part of a minority. The Appellant was from Baghdad so for internal relocation purposes that was his home area. It was unlikely that his group was there in such numbers as to be able to protect him and themselves. It was unclear how many had returned. There were therefore very serious protection issues in this case. The situation was akin to civil war in Iraq and it was therefore, in accordance with the guidance in **Adan**, necessary to look for a differential impact. The Fayli Kurds had been targeted as an unprotected minority and spoke a different language. If he relocated away from Baghdad it would not be to an area where his group were in the minority so he was at risk of persecution on the basis of his ethnicity.
11. The issue of citizenship was unresolved and that fortified the above submissions. The present authority could not grant him citizenship. Mr

Williams referred us to his bundle at page 5 in Regulation number one, and also section 2, which included section 660 of the 1980 law referred to in the amended grounds. As to whether there was a conflict with basic rules of international law there was the point at the start of section 1 that laws in force as of April 16 2003 in Iraq continued to apply insofar as they did not prevent the Coalition Provisional Authority from exercising its rights and fulfilling its obligations. As regards the question of whether the Regulations' status was uncertain since in June Mr Alawi had become Prime Minister, Mr Williams suggested that the Regulations before the Tribunal prevailed until the National Assembly was in place. The matter was dealt with at paragraph 3 of the preamble at page 7 stating that the law was established to govern the affairs of Iraq during the transitional period until a duly elected government operating under a permanent and legitimate constitution achieving full democracy came into being. Elections were scheduled for the end of 2004 or the end of January 2005.

12. We raised with Mr Williams the wording in particular of Article 11 of the Coalition Provisional Authority Regulations and in particular sub-paragraph (E) which states that decision number 666 (1980) of the dissolved Revolutionary Command Council is annulled and anyone whose citizenship was withdrawn on the basis of this decree shall be deemed an Iraqi. Mr Williams referred us to sub-paragraph (D) which states that any Iraqi whose Iraqi citizenship was withdrawn for political, religious, racial or sectarian reasons had the right to reclaim his Iraqi citizenship and at (F) the National Assembly must issue laws pertaining to citizenship and naturalisation consistent with the provisions of this law. He argued that the case required more information and the Home Office should approach the Coalition Authority to see how it would deal with such a returnee at present. At the moment the Regulations were aspirational. There was a need for National Assembly laws for recognition to take place. There were no examples of returns as yet. It was unclear that people like the Appellant would be granted citizenship on return to Iraq today. The real risk test should be borne in mind.
13. At present the situation in Iraq was very uncertain and there was a real risk of disruption by militants and it was unclear whether the election would actually happen and also who would be elected and there could be a coalition for example. This law could be repealed. Political issues surrounded the return of Fayli Kurds. There might be large issues of compensation given the deprivation of properties and businesses that had taken place. It was similar to the situation of Palestinians outside the Occupied Territories or Israel for example. There were no examples of European countries returning Fayli Kurds apart from the mention in the report at page 3 of the bundle.
14. In his submissions Mr McGirr suggested that the dearth of information indicated that there was no problem or no identified problem for a Fayli Kurd on return. The onus was on the Appellant. The appeal must fail.

The crucial point was Article 11 of the Coalition Provisional Authority Regulations and it was perfectly clear. The Country Report at paragraph 5.6 onwards was relevant as to questions of citizenship and nationality and also at paragraph 5.10. There was clearly a structure in place assisting the return of Fayli Kurds who would be recognised by the governing body. The citizenship laws were to be restored.

15. The other submissions concerning the political variables in Iraq were speculative. There was paragraph 5.11 of the Country Report but Article 11(E) should be seen in relation to that. It was a question of real risk on return but the Tribunal was referred also to paragraph 6.44 of the Country Report indicating that Shia Muslims constituted 60% to 65% majority. Religiously and perhaps also culturally the Appellant would be returning to a majority. There was a lack of objective evidence concerning Fayli Kurds being at risk in Baghdad at present and if he was not at risk there, there was no need to consider relocation. The human rights claim went with the asylum claim.
16. By way of reply Mr Williams argued that with regard to the point concerning lack of information, this would be relevant if there was a lot of human rights information available but that was not the case. The UNHCR had withdrawn from Iraq in October 2003 and the lack of information on the dangerousness of Iraq did not indicate that there was no risk. There was a lot of evidence about the level of danger in Iraq now and past persecution of Fayli Kurds and it was inconceivable that they were in any kind of majority in Iraq. Even if he was wrong on the citizenship point, they were still members of a minority and given the current problems would still be at risk. It was not merely speculative to suggest that there could be disputes about such matters as property. It could not be assumed that all would go according to the coalition government plans. There was speculation on both sides as to what might occur and it was proper to make reasonable inferences as to the likelihood of disputes. As regards the point concerning the Fayli Kurds being in a religious majority it could not be said from that that there was a majority of any substance in Iraq constituted by them at present. The Appellant was a Kurd and spoke a different language from the majority which was indicative of risk factors again.
17. We consider first the point that was raised before the Tribunal previously and amplified in the amended grounds of appeal, that being the question of whether or not the Appellant is a citizen of Iraq. This is in no sense determinative of the issues before us, since if we conclude that he is a citizen we would have to go and consider risk on return and equally if we find that he is not and is turned away at the border on any hypothetical return we would still have to consider what risk he might face, on the authority of Saad Diriyé and Osorio.
18. We are grateful to the representatives for the very recent evidence with regard to the citizenship issue that has been produced to us. Thus we note the statement at paragraph 5.6 of the Country Report from the

IWPR Iraqi Press Monitor on 25 February 2004 that Iraqis whose citizenship was cancelled by the former regime will have it restored when the new law of administering the country is issued, according to a governing council member and that this new law will terminate the notorious Resolution 666 under which hundreds of thousands of Iraqis were deported by Saddam Hussein. It is also said at paragraph 5.10 that a Non-Governmental Organisation operating a legal aid centre would help Iraqi returnees who lack Iraqi identity papers to translate and notarise any identity documents that they have in order that they can access legal and other services open to Iraqi nationals.

19. Further, at paragraph 5.11 it was said by the Iraqi press monitor on 27 September 2004 that a Ministry of Interior official had said that all deportees and other Iraqis whose citizenship was cancelled by the former regime for political reasons would soon regain their rights after the issuance of Regulations.
20. We have before us the Coalition Provision Authority Regulations and the law of administration for the state of Iraq for the transitional period. Of particular interest and relevance in this regard, as we have noted above, is Article 11 of the Law of Administration. Article 11(D) states as follows:

“Any Iraqi whose Iraqi citizenship was withdrawn for political, religious, racial, or sectarian reasons has the right to reclaim his Iraqi citizenship.

(E) Decision number 666 (1980) of the dissolved Revolutionary Command Council is annulled, and anyone whose citizenship was withdrawn on the basis of this decree shall be deemed an Iraqi.

(F) The National Assembly must issue laws pertaining to citizenship and naturalisation consistent with the provisions of this law”.

21. Although sub-paragraph (D) may be regarded in some sense as being aspirational, it is clear to our mind that sub-paragraph (E) has the immediate effect of annulling decision number 666 and deeming anyone whose citizenship was withdrawn on the basis of that decision to be an Iraqi. That has clear implications for the position of the Appellant and other Fayli Kurds. The intentions set out in the Country Report to which we have referred above at paragraph 5.6 and paragraph 5.11 have clearly been given effect by the relevant sub-paragraph of this Article, and paragraph 5.10 indicating the legal aid centre that needs to be set up to assist returnees to access legal and other services open to Iraqi nationals is of clear relevance to any problems the Appellant might have in substantiating his claim to be a Fayli Kurd. These are evidentiary matters which were not resolved by the Iraqi authorities, but we are clear that the provision of Iraqi law which removed the Appellant’s citizenship has itself been removed and he is by that provision deemed as of now to be an Iraqi. As we say,

there may be evidentiary issues which he will need to resolve, but we have no indication as to how difficult or easy he would find that, and such matters as giving his previous address, his parent's names and other matters that he can adduce and bring to the attention of the authorities would in our view give him a good prospect insofar as we can tell from the evidence of establishing that he is a Fayli Kurd as he claims and indeed has been found to be by the Adjudicator and as a consequence we consider that it can properly be said that he has Iraqi citizenship.

22. That is of course by no means an end of the matter. As a citizen he is returnable but there is a question then of what he would face on return. At page 3 of Mr Williams' helpful bundle there is a document from the United Nations Office for the Coordination of Humanitarian Affairs Integrated Regional Information Network, dated 21 May 2003, concerned with the difficulties that will be faced by Fayli Kurds on return. There is reference to the very large numbers of Fayli Kurds who were expelled in the late 1970s as being at least 50,000 and the fact that by 1987 another 50,000 at least crossed the border to Iran and probably another 100,000 by August 1998. The property of Fayli Kurds was confiscated as part of the state's campaign against them. The main problem referred to in this document is the problem that will be faced by the Fayli Kurds in re-establishing ownership of their properties that were taken from them. A small number of cases is noted where new owners of houses welcomed the idea of returning them but in many other cases residents were not helpful. The fact that there may be difficulties in this regard is not in our view indicative of a real risk of persecution or breach of the Appellant's human rights on return.
23. Otherwise Mr Williams referred us particularly to the problems that the Appellant would face as a Shia and as not speaking the same language as many other Iraqis. He would be returned very much as a member of a minority. Paragraph 6.102 of the Country Report provides some helpful information on the Fayli Kurds. There is reference there to the fact that Fayli Kurds are said to have returned from Iraq on the fall of the regime but exact numbers are not known and as Mr Williams pointed out nor is it known how they got back, and he suggested, and it is in our view likely that he is right, that they would have drifted over the border rather than being returned in particular to Baghdad or any other major airport. It is said at paragraph 6.102 that Fayli Kurds from north of the Great Zab river speak Kumaniji Kurdish as do the most of the Turkish Kurds, although those south of it speak Sorani and have greater affinity with Iranian Kurds. The majority are Shafi'i Sunni, but about 150,000 in Baghdad in the south east are Shi'i (known locally as Fayli) mostly of Luri origin. In this context we bear in mind also the point made by Mr McGirr that Shia Muslims constitute a 60% to 65% majority of Iraqis and that in that sense at least the Appellant would be in a majority on return. Otherwise it must be accepted that he would return as part of a minority of no very great number, and the figures on this are far from clear, in that it would appear on the one hand that most Fayli

Kurds were expelled in the 1980's but that a number have returned subsequently.

24. Even bearing in mind though we do the various risk factors identified by Mr Williams which we have set out above, we do not consider that on return the Appellant faces a real risk of persecution or breach of his human rights. The Appellant would be returned to Baghdad which is in any event is his home city. We agree with Mr McGirr that there is no need to consider relocation since we are satisfied that what he would face on return to Baghdad is not such as to cross the threshold of persecution in breach of his human rights. Clearly there are risks in Baghdad but we do not consider that the evidence shows that there are risks to a person such as the Appellant with the differences in language and cultural background that he has such as to place him at real risk.
25. This appeal is accordingly dismissed.

**D K ALLEN
VICE PRESIDENT**