LSH
Heard at Field House
On 21 May 2002

APPEAL NO HX44402-2001
DK (Sufficiency of Protection-KAA-Blood Feud) Iraq CG [2002] UKIAT 03608

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

.....9TH august 2002

.....

Before:

Miss K Eshun (Chairman)
Lady Bonham-Carter

Between

DANA LATEEF KAREZA

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

Representation:

For the appellant: Ms F Webber, of Counsel, instructed by Winstanley-Burgess, Solicitors
For the respondent: Mr D Ekagha, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of Iraq, appeals with leave of the Tribunal against the determination of an Adjudicator (Mr T R Cockrill) dismissing his appeal against the decision of the respondent made on 4 June 2001 to give directions for his removal from the United Kingdom following refusal to grant him asylum.

2. In this case the appellant arrived in the United Kingdom on 21 April 1999. He was picked up by Dover Enforcement Unit and claimed asylum the same day. He submitted a Statement of Evidence Form on 20 May 1999. He was interviewed by the Home Office on

22 May 2001. The reasons for the refusal of his asylum application are set out in a letter dated 23 May 2001.

3. The basis of the appellant's claim to asylum is his fear of the Rash family. The Rash family had acted on behalf of the Iraqi authorities to remove Kurds from their villages and place them in a camp. Despite the protestations of the appellant's father to Mr Gathora Rash, the project went ahead and was eventually completed. The appellant's family moved under sufferance to the camp. The appellant's father had the support of Peshmergas against Rash. In 1981/1982 Mr Rash was killed alongside his cousins apparently by Peshmergas. It was considered that the appellant's father was in some way responsible for the killing. The appellant asserted that his father was not behind the killing and nor indeed did he ask the Peshmergas' to kill Rash. In 1990 the appellant's father was killed by the Iraqi security forces. It was believed that the reason behind the killing of the appellant's father was that he had been in some way responsible for Mr Rash's death. Mr Rash had been an agent of the Iraqi government, in the view of the appellant. In 1991 Mr Rash's family attempted to avenge his death and attempted to kill both the appellant and his paternal uncle. The uncle ran a grocery shop but they did not pursue their plans to kill the appellant because the appellant believed that they were aware that he and indeed his uncle gained support from the KDP. The Rash family were supported by the PUK. Although the appellant himself was not a member of the KDP, his maternal uncle was a senior member. In about 1993 or 1994 the family were forced to close their shop and relocate to Shaqwala. This was because Suleimaniya was to be under the control of the KDP. Shaqwala remained under KDP control and so the appellant felt relatively safe there.

4. The appellant's paternal uncle was killed in 1994 in a fight between the KDP and PUK. The KDP took control of Erbil in 1994. Although the appellant continued to feel relatively safe from attack because he remained in a KDP dominated area, there was an occasion on 5 December 1998 when he was shot at from a taxi. He considered that this was an attempt either to kill him or to kidnap him. The person who had fired at him belongs to the Rash family. This incident was reported straight away to the police. A description was given of the attacker and the car in which he had been travelling. Although the police notified the checkpoints on the way to Suleimaniya the car was not spotted. No arrest was made. The police could not provide the appellant with 24 hour protection. The appellant considered that he was not safe and went to Shaqwala and into hiding. Arrangements were then made for him to leave the country.

5. The appellant felt that a truce could not be organised with the Rash family because he could not see them in order to negotiate it. If there was a means of effecting that reconciliation then he would

take advantage of it. He did not know where the Rash family were currently living and thought it was Suleimaniya. Suleimaniya was under PUK control and Erbil was under KDP control at the time that he was last in Iraq.

6. The Adjudicator accepted that the appellant had got a fear of the Rash family but was not satisfied that the Rash family were indirectly responsible for the death of his father at the hands of the Iraqi authorities. He was not satisfied that any positive link has been made by the appellant. What emerged from the evidence and seemed to be in no way an issue was that the Rash family are supported by the PUK. This is to be contrasted with the situation of the appellant. He has gained and so has his family support from the KDP. The Adjudicator found that the appellant made deliberate efforts to remain within the KDP dominated areas such as Erbil and Shaqwala. On the totality of the evidence he found that the appellant can be safe within KDP dominated areas. What the appellant has described is clearly personal animosity from certain members of the Rash family towards his own. That is not a matter which engages the Convention. The Adjudicator considered that the appellant readily turned to his local police after the incident of shooting and efforts were made apparently to try to catch the perpetrator. Therefore should there be any repetition of criminal acts on the part of the Rash family against the appellant in the future, then he ought to turn immediately to the authorities for appropriate protection. The KDP dominated areas are quite distinct from those run by the PUK. In the judgement of the Adjudicator the Rash family are not agents of persecution. The Adjudicator rejected the argument that the appellant is a member of a social group.

7. The grounds of appeal form part of the bundle of papers before the Tribunal. The arguable issue was whether the KDP are capable of providing the appellant with adequate and effective protection from the Rash family, who the Adjudicator considered were not agents of persecution.

8. At the hearing Counsel submitted a supplementary skeleton argument on behalf of the appellant. She also submitted various precedents she intended to rely on.

9. Counsel accepted that the recent Court of Appeal case of **Skenderaj** (25 April 2002) is binding on the Tribunal. Counsel however, submitted that **Skenderaj** is distinguishable. In **Skenderaj** the root cause of the issue between the families was a land dispute, which is clearly outside the bounds of the Convention; and is similar to **Quijano** where the root cause of the issue was criminality. However, she would submit that this appellant's appeal has a political background. The family in this case constitutes a particular social group because of their political background which

gives it its root cause, namely, imputed political opinion. The political nature of the feud is emphasised by the support for the families by the PUK and KDP respectively. Therefore the protection issue is the same whether it is an asylum Convention claim or an Article 3 claim.

10. Counsel then called Dr Maria O'Shea to give evidence. Dr O'Shea is a Research Associate of the Geopolitics and International Boundaries Research Centre and Honorary Research Fellow of the Centre and Near and Middle East Studies, at the School of Oriental and African Studies, University of London. She has particular research interest in the countries of the northern middle-east Iran, Turkey and Iraq and the regions stateless minorities, particularly the Kurds.

11. A witness statement from Dr O'Shea had been submitted in advance of the hearing.

12. Dr O'Shea was asked for her opinion as to whether there could be protection in cases of blood feuds and revenge attacks in the light of paragraph 9 of her report which talked about the disordered nature of the administrative control of the KAA. Dr O'Shea said that as recently as 6 May 2002 a car was routinely stopped at the Kurdistan regional control point. It was found to contain three armed men who opened fire and killed one of the army officers. The car was pursued but no action was taken because the armed men fled into an area under the control of IMIK who are in turn controlled by the Iraqi government. Dr O'Shea said that segmentary tribal politics apply in the KAA. The PUK are reluctant to take action against their own if the problems involves tribal families and clans. It was put to her that this appellant was attacked by the PUK in a KDP controlled area and asked how common or uncommon such an event was. Dr O'Shea said that she had heard several accounts of such events. There is a distinct breakdown of law and order in the KAA and the borders between the regions are permeable. Two weeks ago the PUK and KDP met in Germany to discuss a merger because of the artificial distinction between them. Dr O'Shea said that police officers will not pursue suspects into each other's area. There is a policy of not officially deporting people to either region and there is no formal extradition treaty between the KDP and PUK.

13. Dr O'Shea said that it is not possible to separate family and politics in Kurdistan or Iraq. There can be few Kurds who do not have tribal affiliations. There is a segmentary structure in place which says that the enemy of my brother is my enemy. A family can be a small unit but it can unite together at increasing high level if one of their own is insulted. Tribal revenge can go on for years and years. Individuals can choose to support a party outside of their tribe. The feud might end by mediation. The main mediator will be a religious

person called a sheif. At the moment there is a shortage of sheifs because there is a decline in young people's respect for mediators. If the KDP and PUK merge their areas, there will be an increase in the freedom of the tribes to move around.

14. Under cross-examination Dr O'Shea said that she obtained information about the 6 May 2000 incident from the Habbjah web site which is owned by Kurdish people. The incident was also reported on one of the Kurdish TV stations.

15. Dr O'Shea accepted that there were organised municipal elections in the KAA which international observers considered to be fair. Dr O'Shea was asked why she thought the authorities would not be able to provide the appellant with protection considering that he had visited the police after he was shot at and they had taken action. Dr O'Shea replied that as the appellant said, the police cannot provide him with 24 hour protection. There is a general lawlessness which makes it difficult for the authorities to protect anyone. If it was difficult to protect Mr Bhazani, then it is unlikely that the authorities would put much effort in to protecting the appellant.

16. Dr O'Shea agreed that in the absence of the appellant from the area, it is possible that other members of the family could be attacked, but added that it is unlikely to be female members. She said that the absence of a member can break the feud. She was then asked why it is that Mr Siwaily, the appellant's uncle, has been able to return to the KAA three times since he left the country. Dr O'Shea replied that Mr Siwaily is a senior figure in KDP and moreover he would return for short trips to fortified KDP borders.

17. We then heard submissions from Counsel. On the issue of protection Counsel submitted that the fact that the appellant readily turned to the local police and efforts were made is not conclusive on any issue of protection. In **Souad Noune** [2001] INLR, the Court of Appeal said at page 540, paragraph 28, that an authority doing its best is not enough to disqualify a potential victim from being a refugee. In **Kacaj** the Immigration Appeal Tribunal held that the obligations under the 1950 Convention can extend to the need to protect an individual against relevant ill-treatment by non-state actors provided the receiving state is unable or unwilling to provide such protection as is necessary. However, that does not mean that there will always be a sufficiency of protection whenever the authorities in the receiving state are doing their best. Counsel submitted that **Kacaj** makes it clear that **Horvath** was not talking about deemed protection by way of a justified legal system but a practical standard of protection. The case of **Hari Dhima** also decides that the test for the sufficiency of protection is the same test as in **Kacaj** and **Horvath**. Counsel also cited the case of **Widgery** Soldiers and Others (C/2001/2538) which is about the test of real risk of harm for the purposes of Article 3. It was decided in

Widgery that it is the same test as in the Refugee Convention. In **Widgery** the issue was whether British soldiers involved in the Londonderry incident will have to go there to give evidence and whether there would be a risk of terrorist attacks on them. The Court of Appeal accepted that there would be no terrorists attacks on a Guildhall in Londonderry and that security forces in Northern Ireland were extremely competent and would use all their best efforts to ensure that no such attacks took place. The Court of Appeal however decided that the soldiers would be vulnerable to attacks and because such a risk could not be ruled out, the soldiers would have cause to have fears for their safety. Therefore considerations of the Convention meant that they would not have to do so as there was a real possibility of prohibited harm. Counsel therefore argued that if in the context of Northern Ireland where the security forces are amongst the best in the world, the soldiers were considered to be vulnerable, then how much more of a real risk there would be for this appellant when clearly the authorities in the KDP areas are unable to provide appropriate protection for him.

18. The appellant's uncle, Hoshyar Siwaily was a KDP official in Europe. He says in his statement at paragraph 4 that in March 2001 a very prominent KDP member, Francois Hariri was assassinated. He was the governor of Erbil. In paragraph 5 of his statement he talks about the killing of his cousin in 1987 and the flight of his cousin's family to the United Kingdom because of a lack of protection. According to Dr O'Shea in paragraph 8 of the first section of her report, the Kurdish parties are not able to administer the regions under their control. According to the evidence of the UNHCR of November 2000 there is fragmented and localised control by IMIK. Counsel therefore submitted that there is very clear and strong evidence that the authorities in that part of Iraq are unable, with the best will in the world, to provide the appellant with protection. Therefore the appellant cannot not avail himself of the protection of the authorities in that region.

19. Counsel submitted that the Adjudicator erred in equating willingness with ability. Given the facts that he found, the Tribunal can accept and find that an inference can be drawn on the facts and in the light of the background evidence that there is an inability of the authorities in the KAA to offer protection to the appellant and therefore his claim is made out. As to whether the appellant's claim has a Convention reason or not, Counsel submitted that the case is about a blood feud. The appellant by logical position as a son makes him a target. The Adjudicator's finding that he was not satisfied that the Rash family were indirectly responsible for the death of the appellant's father at the hands of the Iraqi authorities is not against the weight of the evidence. It does not affect the Adjudicator's decision. The Adjudicator accepted that the appellant has a fear of the Rash family. One has to look at the root cause of the issue and she would submit that this family constitutes a social

group by reason of its political opinion. The Rash family believed that the appellant's father killed their father for a political reason because of the removal of Kurds from their village in which Rash elder had participated. It is that political opinion which turns this family into a particular social group. A family which is distinguished by its political opinion and can be expected to be persecuted by reason of its political opinion.

20. Counsel submitted that to return the appellant to the KAA would give rise to a breach of Article 3. Counsel relied on the decision in **Soering** in support of her argument. She said that the decision in **McQuillan** [1995] 4ALL ER 400 is more apposite. At 423 Sedley J said that in his judgement the applicant's testimony, uncontroverted as it was before him, is evidence of a real and continuing threat to his life, with a further consequence that the effect of the exclusion order is to subject him to the inhuman treatment of being for all practical purposes confined to one part of the United Kingdom where his life and his family's safety are most at risk. Counsel therefore submitted that there is acceptance in the domestic context that putting somebody at risk on return constitutes inhuman treatment where they are in fear for their life. She would therefore ask us to find in favour of the appellant.

21. Mr Ekagah submitted that Counsel has not been able to distinguish this case from **Skenderaj**. There is no link in this case of the cause of the blood feud to a political opinion. The evidence of the appellant is that his father protested against the movement of the family to a camp as far back as 1981/82 when Rash was working as an agent of the Iraqi government. Today the Rash family now support the PUK and the appellant's family support the KDP. Both these parties are against the Iraqi government. So it cannot be argued that the Rash family is against the appellant's family. According to Dr O'Shea the two parties met and were considering a merger. So the issue here has nothing to do with differences in their political opinion.

22. Mr Ekagha submitted that the Adjudicator did not make a clear finding that the appellant was shot at by the Rash family. That incident happened over 10 years after the head of the Rash family had been killed. The authorities within the KDP were able to provide protection to the appellant. As soon as he reported the incident, a road block was informed but the car was not spotted. It is therefore not right to say that the authorities were ineffective.

23. Mr Ekagha asked the Tribunal not to give the evidence of the appellant's uncle Siwaily much weight. In paragraph 5 of his uncle's statement he said he was a KDP commander. We know that Siwaily is in the UK and has exceptional leave to remain.

24. Mr Ekagha also asked us not to accept Dr O'Shea's evidence that blood feuds can continue for years and affect the whole family. The appellant has a brother and sister in the KDP area. His brother was born in 1990 and his sister in 1988.

25. It was his submission that the appellant does not belong to a particular social group. The basis of his fear is of a family who claimed that his father was responsible for killing their own father. According to the extract from a Higher Administrative Court (9th Senate), Luneburg, Lower Saxony, in a case decided on 6 March 2000, at B133 of the appellant's bundle, the criteria is that in the event of a family member being killed by an adult perpetrator, then the killing of another family member of equal value is incurred.

The appellant's father himself was killed by the Iraqi forces. Therefore the criteria is satisfied. A family member of equal value has been killed in satisfaction. The CIPU report at paragraphs 3.7 and 3.21 confirm that each KAA region has it's own administration and system of justice with a police force to enforce public order. The police did that for this appellant. The parties were able to engage in elections. Even if the story is accepted, the appellant is not a member of a particular social group and does not come within the Convention.

26. With regard to Article 3, Mr Ekagha submitted that the authorities were able to offer him effective protection from the Rash family. The appellant's uncle frequents Iraq and goes there as a top official of the party. There is therefore a sufficiency of protection for the appellant in the KAA.

27. In response to Mr Ekagha's submission that the Adjudicator made no finding that the appellant was shot at by the Rash family, Counsel submitted that the Adjudicator accepted the factual basis of the appellant's claim. Counsel also said that it was never the appellant's evidence that the road blocks were set up to apprehend his assailants. In paragraph 8 of his statement he said that the police notified the checkpoints. Although the appellant's evidence indicates a willingness on the part of the KDP to assist him, according to the evidence of Dr O'Shea and the UNHCR, willingness is not accompanied by a sufficiency of protection in reality. As to the killing of someone of equal value in satisfaction of the blood feud, Counsel submitted that according to the objective evidence, the blood feud keeps on going and is ended by agreement. The report also makes it clear that a particular member who is sought out for retribution is sought out beforehand. The fact that the appellant's uncle is able to come and go does not give the appellant confidence in his own case. His uncle is not a target. Dr O'Shea says the absence of the person is enough to satisfy the feud and his uncle's privilege in the KDP means that the places he visits are going to be better protected. The fact that the uncle is

willing to return does not mean that there is no risk to the uncle and cannot possibly affect the issue of the appellant's safety given that he is the target.

28. The issues before the Tribunal are twofold:

(1) Whether the blood feud between the appellant's family and the Rash family has an underlying Convention reason and

(2) Whether the authorities in the KAA region are able and willing to offer him a sufficiency of protection.

29. Counsel submitted that the appellant's family constitutes a social group by reason of its political opinion. By so doing she distinguished this case from **Skenderaj**. In **Skenderaj** the root cause of the issue between the families was a land dispute which the Court of Appeal found was clearly outside the bounds of the Convention. In **Quijano** the root cause of the issue was criminality by drug cartels which was also found to be outside the bounds of the Convention.

30. It is apparent from **Skenderaj** and **Quijano**, that we have to identify the root cause of the issue between the Rash family and the appellant's family. According to the appellant's statement and evidence, the problem goes as far back as 1979 when the Iraqi government wanted to build a camp to accommodate Kurdish villagers. Mr Rash was appointed by the Iraqi government to head the project. Despite protestations from his father, the project was completed and the Kurdish families, including his own, moved into the camp. Mr Rash was killed in 1981/82 by the Peshmergas because he was responsible for destroying many Kurdish villages which they had used as bases. The Rash family however believed that the appellant's father was responsible for the killing. This has now given rise to a blood feud.

31. It is our considered opinion that the blood feud does not have as its root cause a political opinion. It may be said that the Peshmergas had a political motive for killing Mr Rash but in our opinion this cannot be extended to the appellant's father. We do not find that the appellant's father's protest was rooted in any political opinion. Furthermore, we agree with the Adjudicator that there is no causative link between the Rash family and the killing of the appellant's father in February 1990. Without a political motive and without a causative link, the appellant's fear of the Rash family remains simply a fear that is grounded on a suspicion that has no Convention basis. Indeed according to the appellant's own evidence at paragraph 5 of his statement, it was after the Kurdish parties took over Kurdistan in 1991, that the Rash family joined the PUK. We are therefore of the view that the PUK's support for the Rash family at this stage did not have the effect of transforming the

blood feud into a political cause. Therefore, following **Skenderaj** and **Quijano**, we do not find that the appellant's family constitutes a social group that is within the bounds of the Convention.

32. We now turn to the issue of whether the authorities in the KAA region are able and willing to offer the appellant a sufficiency of protection.

33. We do not find that the evidence of Dr O'Shea greatly assisted the appellant. Although the appellant claimed at paragraph 5 of his statement that Rash family attempted to kill him and his paternal uncle in1991, when one reads that paragraph there is no evidence that any such attempt ever took place. The appellant only talked about threats and stated that "I believe they never actually carried out their plans to kill either my uncle or myself because they knew that we were supported by the KDP". At this time they resided in Suleimania which was under the control of the KDP. It was not until 1993 or 1994 that he and his uncle relocated to Shaqwala because Suleimania was no longer under the control of the KDP and they feared being killed by the Rash family. This evidence shows that the Rash family did not feel able to carry out the threat to kill the appellant while he was in KDP territory. Indeed, according to his own evidence he felt safe in Shaqwala, which was yet another KDP controlled territory.

34. However, according to the appellant's evidence he was shot at on 5 December 1998, while he was in a taxi by one of the people who threatened him and his uncle in Suleimania. The person who fired the shot was from the Rash family. This Adjudicator did not make any finding on this evidence. Looking at the evidence ourselves, we doubt that it ever happened. By his own evidence, the Rash family had not carried out their plan to kill him knowing that he was supported by the KDP and this was when he was residing in Suleimania. In December 1998, he was residing in Shaqwala, yet another area controlled by the KDP. We would therefore question why the Rash family would now attempt to kill him when he was residing in yet another area controlled by the KDP. The evidence does not add up. Nevertheless, even if the incident did occur, according to his evidence, the taxi driver drove him to the police station where the incident was reported. He told the police he could identify at least one of the attackers, gave details of the car they had been driving and said he expected the car to be returning to Suleimania. The police notified the checkpoints on the way to Suleimania but the car was not spotted. No-one was ever arrested. Because the police told him they could not offer him with 24 hour protection and the KDP also told him that it was not practical for them to provide him with protection in his kind of situation, the appellant decided to leave Iraq.

35. Counsel relied on a raft of cases to support an argument that an authority doing its best is not enough to disqualify a potential victim from being a refugee; that there must be a practical standard of protection; that a willingness to assist does not amount to a sufficiency of protection. In this instant appeal, we find that the police took the most practical action available to them by immediately notifying the checkpoints on the way to Suleimania. That was where the appellant believed his assailants were heading. Given the circumstances, we find that the police provided him with a sufficiency of protection within their capability. We do not believe that a comparison of the police force in the KDP area with the security forces in Northern Ireland is a fair comparison. It is not comparing like with like. As the House of Lords said in **Horvath** no one can be guaranteed absolute protection and this we believe is what the appellant was expecting.

36. According to the extract from the case decided by the Administrative Court in Lower Saxony, the criteria in any blood feud is the killing of another member of equal value. If there was indeed a blood feud, we find that the killing of the appellant's father brought that blood feud to an end.

37. We also note in that same extract, that victims and perpetrators are mostly sought out beforehand, with the result that word generally gets out around in families about who is next in turn and who must do it. As there is no evidence before us of this happening in this case, we can only conclude that there was no blood feud, but if there was one, it no longer exists. According to Dr. O'Shea, the absence of the appellant from the area means that it is possible that other members of the family could be attacked; though not female members. The appellant has a younger brother and there is no evidence that this brother has been targeted in any way by the Rash family. This must surely indicate that there is no blood feud.

38. We are unable to place any weight on the evidence of the appellant's uncle Hoshyar Siwaily. He has lived in the UK since 1984 and we can only assume that any information he has about the appellant has come from the appellant himself and/or other sources. He is a high profile KDP official and his circumstances are completely different from the appellant's own circumstances.

39. Therefore, in all the circumstances of this case, we find that the appellant's appeal must fail.

Miss K Eshun
Vice President