Asylum and Immigration Tribunal

SI (expert evidence - Kurd - SM confirmed) Iraq CG [2008] UKAIT 00094

THE IMMIGRATION ACTS

Heard at Glasgow (Eagle Building)
On 7 May 2008

Before

SENIOR IMMIGRATION JUDGE STOREY
IMMIGRATION JUDGE CORKE

Between

SI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Mitchell QC instructed by Livingstone Brown Solicitors
For the Respondent: Mr Laverty, Home Office Presenting Officer

1. *Failure by the respondent to adduce her own expert evidence cannot imbue expert evidence submitted by an appellant with any greater value than it merits when considered alongside the rest of the evidence.*

2. *The evidence relating to the official justice system in the KRG falls short of demonstrating that all persons who are tried in that part of Iraq will face a process that would amount to a flagrant denial of the notion of a fair trial: SM and Others (Kurds-Protection-Relocation) [2005] Iraq CG UKIAT 00111 followed.*

3. *The guidance given in SM regarding relocation of a Kurd from the KRG to central or southern Iraq, which was that it can in general be effected without this being unduly harsh*

and without giving rise to a real risk "in all but the most exceptional high profile cases" of their relocation being brought to the attention of [any of the KRG authorities], also remains valid.

4. *"Honour killings" and "blood feuds" are distinct phenomena, albeit they may sometimes overlap in practice.*

DETERMINATION AND REASONS

1. The appellant is a national of Iraq. He arrived in the UK on 14 July 2000 and claimed asylum. On 5 November 2001 the respondent made a decision to issue removal directions, having refused to grant asylum. On 19 November 2003 an Adjudicator, Mr J G Macdonald, dismissed his appeal. On 23 August 2005 a panel of the Asylum and Immigration Tribunal chaired by Senior Immigration Judge Allen upheld that dismissal. Its decision was reported as SM and Others (Kurds-Protection-Relocation) [2005] Iraq CG UKIAT 00111. Subsequently on April 2007 the Inner House of the Court of Session decided that the Tribunal had erred in law and ordered that the appeal be reheard by a different constitution of the Tribunal: we shall have cause to consider the precise terms of that order later on.

2. The principal facts relating to the appellant's case are not in dispute. As stated by the Tribunal in SM at paragraphs 14-16 they are as follows:

> "14. Mr ( ) had been a member of the PUK until 1995. In 1983 a PUK organiser, Omer Hamakaki had murdered the appellant's uncle, Mulla Omer. When the appellant stopped working for the PUK in 1995 he opened his own business as a hairdresser. His cousin Aso, the son of Mulla Omer, came to visit him on 3 June 2000 and on 10 June he was in his hairdressing salon and Aso was with him. Aso saw Omer Hamakaki pass by the shop and shot him, and fled to the appellant's sister's house. The appellant felt that he also had to run as he feared that Hamakaki's family would take immediate revenge upon him.
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> 15. Both Aso and the appellant's brother were arrested in connection with the murder. The appellant's brother was released. Aso was killed by the family of Omer Hamakaki and his relations and the PUK, according to the appellant's answer to question 24 at interview. The Hamakaki family belong to the Jaff tribe which the appellant said was present throughout the whole of Iraq. He also claimed that although Aso had been killed by Hamakaki's family, the tradition of revenge killing had not been satisfied, and he was perceived as being involved in the murder.
>
> 16. He produced various documents including a letter issued by a PUK commander indicating that he was involved with Aso Omer in the killing of Mr Hamakaki, and also describing the appellant and containing instructions that he be arrested."

3. There were, to be precise, two documents evidencing an arrest warrant from a PUK Commander of Dukan Sector (5) dated 14 June 2000. One was addressed to "the respective General Commander Force of H.P.K." and referred to Aso as Hamakaki's assassin and to his having stayed beforehand for 3 days at the appellant's house. It added:

> "The assassination took place in front of his shop. This indicated that he was involved with Mr Aso Omar for the assassination of our comrade Mr Omer Hamakaki. Therefore, we request his arrest by your force, police and Asayeh forces in order to bring him for investigation".

4. The second document, stamped by the same commander and bearing the same date, was addressed to "all respective commanders" and instructed the arrest of the appellant "…because of his involvement with the accused person Aso Omar for the assassination of comrade Omar Hamamaki on 10 June 2000. "

5. At the hearing Mr Mitchell QC on behalf of the appellant sought to adduce more recent evidence in the form of a statement from the appellant dated 3 October 2007 relating to his past experiences in Iraq. In the course of giving further details about the nature of the blood feud in which he had become involved, the appellant refers to Aso having killed Omer Hamakaki with a Kalashnikov. The appellant says he kept a gun in his house, but did not take it out with him. Aso, however, "used to carry a weapon with him all the time, first of all to protect himself and secondly to try and eventually take revenge for his father". Mr Laverty for the respondent opposed admission of this further statement on the grounds that it had not been served in accordance with Tribunal directions and the respondent was not prepared to deal with it at this late stage. Having considered the matter, we decided not to admit this evidence. This appeal has a long history and it has been known to the appellant and his representatives for some considerable time that there was to be a further hearing on the date fixed. There was nothing said in the application to the Inner House of the Court of Session to indicate that the appellant wished to adduce further evidence about his past experiences. Nor was anything mentioned after specific directions concerning the nature of this hearing had been given by Senior Immigration Judge Mather on 21 August 2007. None of the matters outlined in the appellant's statement falls into the category of fresh evidence which he could not have been reasonably expected to adduce earlier. It has been the clear position for some time that the historical basis of the appellant's appeal was not in dispute and in our view it would subvert the purpose of the Inner House of the Court of Session's order if we were to admit further evidence that could have the effect of causing us to revisit the basics facts relating to the appellant's personal history. We would add that, even had we taken this recent statement into account, we would not have considered that it markedly added anything to the appellant's previous account. In particular we do not think that the extra detail, that the appellant knew that Aso carried a gun all the time (one purpose being in case he had a chance to revenge his father's death), would play any significant part in what happened to the appellant on return.

6. We did, however consider it appropriate to admit further background evidence from both parties relating to the situation in Iraq. It was necessary for us to do so because our task is to assess whether the appellant faces a real risk of serious harm or ill-treatment as at

the date of hearing before us. Recent background evidence, along with the evidence of the country experts, is highly relevant to that assessment.

7. So far as the law is concerned, we confirmed at the outset with the parties that there was no issue of exclusion and that the appellant did not seek to argue that he faced a real risk of persecution for a Convention reason: his case stood to be considered solely in terms of whether he was eligible for humanitarian protection and whether he faced a real risk of ill-treatment contrary to Article 3 of the ECHR. We must decide whether there are substantial grounds for believing that if returned the appellant would be exposed to a real risk of serious harm or ill treatment. Subject to what we have said above we must consider the appellant's circumstances in the light of the evidence as a whole, including that we had from several experts. One other matter we discussed with the parties concerned whether, given that the respondent had not raised the issue of internal relocation before the Tribunal in SM it was open to her to do so now: we shall come to that after we have dealt with the issue of risk to the appellant in his home area.

The expert evidence

8. The materials before us included the reports that were before the Tribunal in SM (from Dr Rebwah Fatah, Ms Sheri Laizer and Mr Joffe), the Tribunal's summary of the oral evidence of Dr Fatah and Ms Laizer as given in SM**,** together with reports from Dr George and Dr Fatah written post-SM. In this determination we propose to elaborate only on the further expert evidence which has been produced post-SM.

Dr George

9. Dr George's report of 14 November 2007 describes the population breakdown of Iraq as being 60% Shia, 20% Sunni Arabs and 20% Kurd. Family, extended family and tribe were the fundamental units of Iraqi society. The Jaff, whose numerical strength is estimated as up to three million, is the largest Kurdish tribe. He describes tensions between these three main communities as having heightened, plunging Iraq into the early stages of a civil war. On the strength of UNAMI figures for January-March 2007, he states that an estimated 54% of the Iraqi population is living on less than US$1 per day, among whom 15% is living in extreme poverty (less than US$0.5 per day); the unemployment rate had risen to about 60%. He details the figures of those killed in the conflict and describes the various protagonists in the conflict, including the main insurgent groups. He also analyses both the situation in the KRG and in central and southern Iraq.

10. According to Dr George, revenge attacks can be directed not only against specific individuals but also against their extended families. Quoting from his book, Jordan: Living in the Crossfire, October 2005, he states that in Iraqi, as in Jordanian, society:

> "*sharaf*, or honour, is everything, traditional mediation seeks to ensure that problems affecting individuals do not escalate into conflicts involving entire families and tribes…Tribal custom requires murder to be compensated by mutual agreement, failing which honour can be satisfied only by vengeance against the killer's family. Such so-called blood feuds can be grisly and protracted affairs involving a cycle of retaliation and counter-retaliation that sometimes passes from generation to generation".

11. Dr George states at para 86 that he knows of:

> "no evidence to suggest that the risk to [the appellant] would face as a result of the blood feud would have diminished merely because of the passage of time. I would note again that while family/clan/tribal blood feuds can be resolved through mediation… I am not aware that efforts at mediation have been made in the feud involving [the appellant]".

12. He was unsurprised that the appellant's wife and child and two sisters had been able to remain in Iraqi Kurdistan without being targeted, since it was the custom for women and children to be exempted from blood feuds. However, the fact that the appellant's two brothers had been living in Kurdistan apparently without problems did surprise him as he would have expected Hamakaki's family to have targeted them in the appellant's lengthy absence.

13. In his opinion the appellant would be at risk from the family of Hamakaki as a result of the blood feud. From this family/clan he would be at grave and immediate risk, as they were the most motivated to target him. The fact that the appellant had in reality played no part in the murder of Hamakiki would not necessarily be relevant since the Hamakiki family/clan would very likely have perceived him as been a party to the killing. The murder had taken place directly outside the appellant's salon and the appellant had fled from the scene of the murder. The appellant would also have good reason to fear the PUK not only per se because of its close connections with the Hamakiki family/clan but also because of its involvement with the KRG and the Baghdad government, albeit his risk from the Baghdad authorities would not be as great given that they were embroiled with a major insurgency and would not regard the matter involving the appellant as having a high priority. That said, the Kurdish elements within the Baghdad government, and notably the PUK and KDP elements, might be motivated to target the appellant.

14. Dr George was also of the opinion that were the appellant to be detained by the Kurdish authorities (whether the PUK or another entity) he would run a real risk of being maltreated or worse. He cited what was said in the US State Department Report of March 2006 and UNAMI reports regarding KRG treatment of detainees.

15. Dr George was adamant that the appellant could not relocate within the KRG, given that the Hamakaki family would be able through their connections with the PUK, KDP and KRG authorities, to locate and harm the appellant in all parts of the KRG-controlled areas. The appellant could not expect protection from the KRG authorities.

16. Addressing risk to the appellant as a Kurd if he sought to relocate to central or southern Iraq, Dr George noted that Kurds living in Sunni Arab areas have been attacked by insurgents as "Collaborators" with the US occupiers and driven from their homes. He detailed the large numbers of Kurds who in recent years had been forced to flee Mosul and the Sunni Arab cities of Fallujah, Ramadi, Samarrah and Baquba. The dangers facing Kurds south of the KRG zone were highlighted, he wrote at para 96, on 14 August 2007 when two Kurdish villages, Adnaniya and Qataniya were attacked by extremist Sunni Arab groups. He cited UNHCR's August 2007 Guidelines recording that in mixed areas such as Baghdad, Mosul, Kirkuk and Kiyala, Kurds had come under fierce attacks from

Sunni Arab insurgent groups, both because of their imputed political opinion as well as their ethnicity. These Guidelines also recorded that Kurds in minority areas such as Baghdad, Fallujah and Ramadi have been displaced by force. Many Kurds from Mosul City, the western side of which once had a majority of Kurds (and Christians) have been displaced, mostly to the three Northern Governorates.

17. The fact, added Dr George, that the appellant, albeit non-Arab, was a Sunni would mean he was exposed to sectarian violence at the hands of various Shia groups. The fact that he would be a returnee from a Western country would, according to a June 2004 UNHCR report, also expose him to a danger of kidnapping. In addition, the appellant would face more general, but nevertheless real, risk as a result of the widespread violence in Iraq.

18. Dr George was also firmly of the view that within the centre or south of Iraq the appellant would face a serious risk of being targeted because of his Kurdish ethnicity. Citing in support the UNHCR December 2006 Advisory, he wrote:

> "In mixed Sunni-Shia towns in central Iraq (including Baghdad) Sunnis, such as [the appellant] are being targeted. As a Sunni, he could not relocate to the Shia-dominated south of Iraq and I would note that Kurds are being targeted because of their ethnicity in the Shia south as well as in the Sunni centre in Iraq. The fact that the appellant had no supportive family connections would cause him to encounter difficulties finding work and accommodation. The fact that wherever he went people in the locality would quickly become aware of his background would make it relatively easy for pursuers to locate him. The appellant would also need appropriate documentation."

19. We also heard oral evidence from Dr George, which can be summarised as follows. Since his written report of 14 November 2007 the security situation in Iraq had not fundamentally improved. As at May 2008 it was "as bad as it ever was". A reduction in levels of violence had occurred but this owed much to highly contingent factors, in particular the renewal of the Mahdi Army's ceasefire and the Sunni Awakening Council's cooperation with the Americans in opposing Al Qaeda in Iraq (AQI). The recent decision of the Government of Iraq (GoI) to crack down on Mahdi Army militants was likely to see the levels of violence go back up. All the key issues essential to achieving stability in Iraq were still unresolved.

20. Dr George had visited Iraq in April 2008. He had seen for himself Kurdish Regional Government (KRG) checkpoints and had had meetings with a range of KRG officials, including the KRG Foreign Minister. At Erbil airport the officials used computerised records and he was told they kept lists of wanted persons.

21. In the KRG, explained Dr George, there were parallel justice systems: (i) the regional government system, both civil and criminal; (ii) the tribal system, which operated independently; and (iii) a fusion of (i) and (ii) in which government officials and powerful tribal figures interacted with each other. Even within (i) he did not consider individuals charged with offences would get a fair trial.

22. As to what would happen to the appellant on return to his home area in the KRG, it was extremely difficult to make hard and fast statements, as so many factors could come into play, including the fact that the man whom his cousin murdered was closely connected to the PUK leadership. The chief of staff he interviewed had confirmed that, whenever they chose, the PUK could involve the KRG in taking action against someone and vice versa. If the appellant were dealt with by the official justice system, it could be some considerable time before he was brought before a court, during which time he would be incarcerated and could be ill-treated. An official member of the PUK with a particular adverse interest in the appellant could ensure he was badly treated. So far as the general security situation in the KRG was concerned, however, he agreed that it was vastly improved, although there were still terrorist attacks from Ansar Al Islam.

23. As regards the appellant's prospects of internal relocation outside the KRG, they would be dim. In central and southern Iraq Kurds faced targeted attacks. To move south, a person from the KRG would need a certificate from the security services. That in turn would require a person to obtain documents such as a birth certificate from their home area. Without documentation a person would not be safe. UNHCR figures showed there was a net outflow of refugees from Iraq.

24. Asked what significance he would attach to the fact that no harm had come to the appellant's siblings, Dr George agreed this was a relevant factor. It did not as such indicate that there had been mediation. He accepted, however, that if he had been in the appellant's shoes he would have asked his family to try mediation on his behalf. Mediation did happen if both parties wanted it, but there was not the information to say it had happened in this case. If the appellant's family had become involved in a full-blooded blood feud, he would have expected the appellant's siblings to have been in the firing line. Although the PUK had sought to tackle the problem of blood feuds by changing the law relating to honour killings (classing them as murder), their main concern was honour crimes against women in respect of which they had changed the penalties. It was not the case that blood feuds never ceased, but there were no set regulations or practices; some feuds could be quiescent for years only to flare up again. The fact that in this case the murderer had himself been killed by the victim's family did not essentially mean the latter regarded the feud as over; it might do it, it might not. Asked by Mr Laverty why he had been much more definite in his written reports (where he spoke of the appellant being at "grave and immediate risk"), Dr George said one could not quantify risk; the best way of putting it was to say "grave, immediate and serious". It was for the Tribunal to decide. Asked to clarify why he had written that on any return to Baghdad, the appellant would be recognised as a Kurd, Dr George said officials had good knowledge of people's backgrounds. He did not seek to say that all Iraqis returned to Baghdad would be at risk, but if someone had been in Europe for a significant period of time, they would be perceived as wealthy.

25. Mr Laverty questioned Dr George as to whether the appellant in his view would need to return to his home area if he had, as it appeared, essential documents with him already (birth certificate and ID card). Dr George agreed that if he had the appropriate documents he would be able to enter and stay and find employment in Baghdad, although

background reports spoke of the need for a personal visit and the new G series passport being only available in Baghdad. He accepted that in central and southern Iraq there were some areas where Kurds were numerous, but (even leaving aside that he considered the current security situation made it unsafe for any relocation southwards), it could not be taken for granted they would help support someone like the appellant: such support was principally through extended family clan or tribe connections. Kurds could not safely relocate to central or southern Iraq.

26. Dr George was asked his opinion about the arrest warrants issued by the PUK naming the appellant. He considered they indicated the appellant was of adverse interest and would be put on trial. What could happen when he returned depended heavily on the reaction of the extended family of the murdered man.

27. As regards the issue of whether the appellant could safely relocate *within* the KRG, he considered that for the appellant this would be like Russian roulette. He faced risks from both family members of the murdered man and/or the PUK. As regards risk from the family, the chief-of-staff he interviewed had said that blood feuds were a noticeable feature. Mediation was possible through a third party tribal leader. He agreed it was surprising the appellant had not taken steps since being in the UK to find out whether mediation was possible. He agreed that if there was a fully active blood feud, one would expect all male members to have faced reprisals. As to risk from the PUK, the appellant would be perceived by them as a traitor because he had fled his home area. According to Human Rights Watch, torture of detainees in the KRG was routine. Adverse interest on the part of the PUK was likely because the murder had involved a senior PUK official.

Dr Fatah

28. We turn to Dr Fatah's updated report of 2 May 2008.

29. When setting out the claim of the appellant as he understood it, Dr Fatah stated that:

> "He claims that if he were returned to Iraq, he would be persecuted by PUK and Hamakaki's clan of the Jaff tribe. He claims that the Hamakaki clan is very powerful in Iraq and his life was in danger due to the threats from the PUK and Jeff tribe. The dispute has developed to a tribal feud, which would be backed up by one of the main Kurdish political parties, the PUK".

30. The Jaff tribe is affiliated to the PUK and the PUK acts in favour of the Jaff. They are Sunni Kurds. It is one of the most substantial tribes in size. Jaff's territories occupy a huge area of Iraqi and Iranian Kurdistan. Tribes such as the Jaff have become "neo-tribes" who have attained political influence extending beyond their geographical regions. One of the characteristics of Kurdish society was many people are being killed as part of tribal reprisals. Honour killings take place on a daily basis. A Danish source had estimated that since the Kurdish authorities came to power in 1992 at least 30,000 women had been killed in the name of honour, although that figure is disputed. Various reports dealing with honour killings illustrate that tribes are influential in many aspects of Kurdish society. Tribal feuds will not fade away with time.

31. It was not his view that the entire Jaff would seek to visit ill treatment of the appellant, only the family and clan of Hamakaki; however this family and clan can gain the support of others parts of the Jaff and that of the PUK. In Dr Fatah's opinion the appellant would face risk on return from the Hamakaki clan who would be able to call on the backing of the PUK. It was also possible that relatives of the family/clan of Hamakaki could take reprisal action against the appellant on their own accord. In that case, the PUK would turn a blind eye. The appellant was not affiliated to any political parties or tribes, therefore, he would be an easy target and defenceless.

32. If the appellant were dealt with by the PUK and the KRG authorities, he would not be treated fairly. The KRG and PUK are committing grave human rights violations. People are detained for years without a trial and detained people disappear without their families having access to information about them. Ordinary citizens, like the appellant, are subjected to ill treatment. Further the KRG is not stable, with a renewed threat now of invasion from Turkey and insurgents from the south carrying out attacks.

33. Relocation within the KRG would not be possible because the Jaff and PUK can exercise direct governmental or quasi-governmental control over this area. The appellant would come to their attention. That would apply at his first point of contact, at an entry port of airport as well as, thereafter, at various checkpoints. In addition the appellant would face cultural and linguistic isolation and problems finding a job. The security situation in Kurdistan is far better than that of the rest of Iraq; however, the KRG is not able to protect citizens, especially from tribal reprisals.

34. Relocation would not be possible anywhere in Iraq because the PUK is an influential power not only in the KRG but in the whole of Iraq. PUK and KDP leaders have influential positions in central government and are in power-sharing with other political parties. They have signed cooperation agreements over security, political, economic and social matters. Such agreements have empowered the PUK and KDP to chase up anyone who is wanted by the KRG authorities. "Thus, relocating [the appellant] to other parts of Iraq would be unlikely due to the power-sharing of KDP, PUK and their agreements with other Iraqi political parties". For example, the KRG has 10,000 soldiers in Baghdad and provides security in Kirkuk.

35. Another aspect to this is the racial friction between Kurds and Iraqi Arabs, who speak a different language and have distinct customs. This has been exacerbated by the current conflicts. Kurds are regarded by many Arabs as "traitors" and "infidels" for collaborating with the US forces in ousting the former Iraqi government. Kurds in Iraqi government controlled areas are in particular danger. Attacks against Kurds are mainly carried out by Islamic groups who see the Kurds as collaborating with the occupying forces. Citing various reported incidents of targeting of Kurds, Dr Fatah states that these are representative of a daily killing on the basis of identity. This would mean that someone such as the appellant would be at risk because he would have no social or political power to support him and the authorities are unable to protect people.

36. There is also the fact that throughout central and southern Iraq – indeed the whole of Iraq - there is a security vacuum, which has led to 4 million Iraqis fleeing the country. Militias are prevalent and opportunist criminal gangs exploit the security vacuum. There is no effective authority in Iraq; citizens cannot obtain protection. Iraq has fractured into regional power bases; political, economic and security powers have devolved to local sectarian, ethnic or tribal political groupings:

> "For an ordinary citizen like [the appellant] who has no political and tribal affiliations, the chance for him to live safely is very weak. In today's Iraq no accused can get a fair trial and no victim can get justice. The independence of the judiciary has been negatively affected by consistent attacks on and killings of judges and lawyers."

37. As a result the appellant would be a "soft target" as he has no protection from any social groups such as a tribe or political groups. Evidence shows that Kurds are not safe in Arab Shia and Sunni areas of Iraq.

38. To relocate the appellant would also need an Iraq Personal Identification Document (PID) and an Iraqi Nationality Certificate (INC). Without these documents and a place to live he would not be able to get food rations, and without those he would face extreme poverty.

39. Dr Fatah's oral evidence can be summarised as follows. His written report of 2 May 2008 continued to reflect up-to-date evidence. He has visited Iraq between 10-28 April 2008. The Jaff was one of the main tribes in the KRG and many leaders and commanders of the PUK were from the Jaff. Hamakaki was of the Jaff and had been a PUK tribal leader, so his family would have a substantial tribal base. On return to the KRG the appellant would most likely be dealt with by the security forces, because of the murder victim having been a tribal leader. The warrants had been issued by peshmerga forces. Despite being issued in 2000, they would still be considered as effective, albeit computerisation of records, lists etc only happened from 2003 onwards.

40. As to relocation southwards, he did not consider the appellant could do so without the necessary documents. Also, in central and southern Iraq, he repeated, Kurds were soft targets for insurgents; thousands had been killed or displaced. In answer to questions from Mr Laverty, Dr Fatah said that whilst he did not rule out that some Kurds could relocate in safety, the average Kurd could not. It was possible some Kurdish communities could re-establish themselves. If the appellant had good connections (and assuming he had no political profile), it was possible they would help him with the necessary documentation needed to get through Arab and Shia checkpoints.

41. Dr Fatah said that as Hamakaki was a member of the Jaff tribe which covered a wide area and was part of the warlord regime, the appellant would have problems with members of this tribe, individually and politically. Security was very much a family affair. He was surprised that neither of the appellant's male relatives had come to harm. The appellant would be dealt with by the PUK. The appellant would not get a fair trial because of the blood feud: things would not be done by the book. Whilst in detention he would face ill-treatment. If he sought to relocate to other areas of the KRG outside his home area,

he may well be on a wanted list and he would have problems finding a job. Outside the KRG, as a Sorani-speaking Kurd who did not have family connections locally, he would face serious risks.

42. Mosul was very dangerous for Kurds, many had fled from there. Kirkuk was different, but the Article 114 referendum, still delayed, was causing political instability. If the appellant had problems with the PUK, Kirkuk would not be safe for him.

43. He could not say whether details on a person held on old paper records kept by the KRG authorities would have been transferred when they introduced computer records, but it was possible and he had known people go back after many years and still face trouble. The security in the KRG was sophisticated; they even monitored mobile telephone calls.

Closing Submissions

44. In closing submissions Mr Mitchell contended that the appellant would clearly face a real risk of serious harm in his home area, arising out his family's blood feud with the Hamakaki family and the circumstances under which he left. There was a warrant for his arrest. Inevitably he would come to the attention of the PUK on return and of the Hamakaki family. He would be detained and ill-treated in detention and would not get a fair trial. He could not safely relocate to other parts of the KRG, because they all would know he was a fugitive from justice. Relocation in central or southern Iraq was not a viable option either. In Kirkuk, where there were many Kurds, the PUK there would get to know who he was and would deliver him to the PUK in his home area or deal with him themselves. Even in other parts of central and southern Iraq where there were Kurdish communities, the appellant would not be safe because insurgents would target him as a Kurd; and, in the absence of any local family connections, he would struggle to survive economically. In any event he would need to return first to his home area in order to get the necessary documents so as to be able to pass through various checkpoints, government or militia.

45. Mr Mitchell said that all these propositions were strongly supported by the expert evidence. The respondent had not called or produced any country evidence. Accordingly the evidence should be accepted in its entirety and the most favourable inferences drawn from them for the appellant: he cited Ross v Associated Portland Cement Manufacturers [1964] 1 WLR 768 [1964] 1 WLR 768 and O'Donnell v. Murdoch M'Kenzie & Co 1967 SC HL 63. The background evidence contained nothing to call into question any part of the appellant's evidence and claim. The Tribunal should follow UNHCR's position, which remained that no one from the KRG, Arab or Kurd, could safely relocate to central or southern Iraq.

46. When considering risk in the appellant's home area, Mr Mitchell urged us to keep in mind that the KRG did not have a proper system of justice. The Iraqi Penal Code based on the 1936 Soviet Constitution was not followed in practice; the judiciary was not independent. Because of the existence of a blood feud implicating the appellant, there was

a substantial risk of extrajudicial punishment. The appellant has been accused of conspiracy to murder; the evidence against him is real albeit circumstantial. The appellant would face risk from the Hamakaki family as well as the PUK. He would be perceived as a traitor. It was unclear whether Aso was killed by the PUK or handed over by them to the Hamakaki family, but his killing was plainly extrajudicial. The appellant's brother was released on it being established he was not involved; the same would not happen to the appellant. As the Court of Session noted, to assess that the passage of time would mean the appellant was no longer at risk would be sheer speculation. Between Hamakaki's death and Aso's there had been a seventeen year gap; the experts too noted that blood feuds could linger on. In the eyes of the Hamakaki family and the PUK, conspiracy to murder would not fade with time. The experts were adamant the appellant could not relocate in a subzone of the KRG or outside the KRG. In Kirkuk, where there were many kinds of Kurds there was ethnic neo-warfare and it was subject to the reach of the PUK, they could deal with him themselves or transfer him back to his home area. In Arab Iraq he faced substantial risk as a Kurd. He would not have the necessary documents to negotiate controls and checkpoints; he faced problems or random violence as well as ethnic cleansing.

47. Mr Laverty for the respondent submitted that the appellant would not be at risk in his home area. The appellant played no part in the murder. The authorities had apprehended the actual murderer. The appellant's brother had been released (in the appellant's own words in his statement) "*because* they caught the murderer". Both experts had agreed it was surprising the appellant and his family had not sought mediation. Even if the authorities had decided to put him on trial, Dr Fatah had said, at least some of the time, that a fair trial in the KRG was feasible. The claims that he would be tortured in pre-trial custody were purely speculative. The appellant is a former PUK man himself. He was innocent of the crime. The appellant's evidence was not that he feared the PUK and no Convention ground was involved.

48. As regards internal relocation, the appellant would be able to relocate safely within the KRG: he had managed to live with relations for seven nights (in nearby Rania) without any search being made for him.

49. As regards central and southern Iraq, added Mr Laverty, the background evidence showed that there are Kurdish communities able to exist safely in certain parts of Iraq. The evidence fell well short of showing that in such areas of Iraq Kurds per se were being targeted. The appellant could obtain the necessary documents he would need: his family had sent him some already, including a national ID card. The guidance given in SM and Others still held good. Further, Dr Fatah said the appellant was not visible as a Kurd, albeit it was accepted he may not speak Arabic. He lacked party political affiliation, although he was a former PUK peshmerga. In KH (Article 15(c) Qualification Directive) Iraq CG [2008] UKAIT the Tribunal rightly attached weight to the evidence that UNHCR had not said that persons who had returned to Iraq were again at risk.

50. Further written submissions, made with the Tribunal's permission largely reiterated earlier points.

The background evidence

51. Since Dr George's and Dr Fatah's reports and oral evidence drew heavily on the principal background materials we do not, with one exception, propose to summarise their effect. A full list of the materials we have before us is contained in an Appendix. The exception is the evidence from UNHCR sources. A UNHCR report of 29 January 2005 and a further letter of 24 March 2005 were considered in SM (see paras 169-174), but UNHCR has updated its position several times since.

UNHCR's position

52. The 18 December 2006 UNHCR Return Advisory and Position on International Protection Needs of Iraqis outside of Iraq states, inter alia, that in Iraq the authorities cannot provide effective protection to the population and that, whether the individual is a refugee under the 1951 Convention or flees generalised violence, there is no internal flight alternative within the southern or central regions, given the reach of both state and non-state agents of persecution, the lack of national protection and grave insecurity and human rights violations prevailing in those parts. An individual, who relocates to an area from where she/he does not originate, would likely face serious ongoing difficulties given the lack of protection provided by local authorities, communities or tribes, ethno-religious hostilities and the lack of access to basic services.

53. The main passages in the UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, August 2007 that are relevant to internal relocation for a Kurd from the KRG to central and southern Iraq are as follows:

> "151. In the context of Iraq, UNHCR's analysis distinguishes between the situation in South and Central Iraq and the situation in the three Northern Governorates. The availability of an IFA/IRA in the latter area would also depend on whether the individual concerned is from Central and Southern Iraq or from within the three Governorates themselves.
> 1. IFA/IRA in Areas of Central and Southern Iraq
> UNHCR considers that an internal flight or relocation alternative in Central and Southern Iraq is on the whole not available, because of the overall ability of agents of persecution to perpetrate acts of violence with impunity, the widespread violence and prevalent human rights violations giving rise to new risks of persecution, risks associated with travel, and the hardship faced in ensuring even basic survival in areas of relocation. When, however, the availability of an internal flight or relocation alternative must be assessed in a national procedure, it should be examined cautiously and in the context of the individual claim. UNHCR's Guidelines on Internal Flight/Relocation Alternative should be taken into account.
>
> a) The Relevance Analysis
> i. *Risk of Persecution or Other Serious Harm Upon Relocation*
> As indicated in these Guidelines, persecution could emanate from state as well as non-state agents. Within Central and Southern Iraq, both state and non-state agents of persecution could pursue their targets throughout and state agents are known to be able to operate with impunity. In regard to non-state agents of persecution, protection by national authorities would on the whole not be available given the fact that the national authorities have limited capacities to enforce law and order, and the security agencies, namely the ISF, are themselves infiltrated by radical elements. The void created by the absence of a strong central government is gradually being filled by militant groups operating from bases in different areas of Central and Southern Iraq. These groups, whether religious or ethnic,

cannot be considered to be operating as effective authorities in the areas under their control, as they themselves are the targets of frequent attacks from individuals and groups in those areas. Absolute allegiance to the ideology of the group is a fundamental requirement, and in the general absence of the rule of law, arbitrariness and human rights violations are rife. The highly volatile and fluid political and security situation existing in Central and Southern Iraq renders the area subject to a great deal of significant unpredictability, with possibilities of new risks of persecution arising from a wide range of actors anywhere at anytime. Furthermore, in the smaller towns and cities, ongoing communalism and lack of state protection has enforced the need for individuals to stay close to their kinsmen. Any newcomer, particularly when he/she does not belong to the existing sect, tribes or families, is liable to be severely discriminated against or subjected to ill-treatment so as to amount to persecution. Even those who originated from the area may be perceived as newcomers, if they left a long time ago and have lost all links with their tribal-based community.

ii. *Particular Considerations Relating to Formerly Arabized Areas*

The increasing ethnic-religious violence in the formerly arabized areas, the highly sensitive political, ethnic and economic nature of these areas and the risk of further destabilizing the situation through significant population movements need to be considered when assessing the availability of an IFA/IRA in these Governorates. It must be noted that the distribution of land and housing is disputed between the main ethnic factions. Any access to land granted to newcomers on an *ad hoc* basis (generally done in order to increase an ethnic population in a particular area) by authorities in certain areas is heavily contested by the other ethnic factions, and may have serious consequences for the ability of individuals to secure protection and/or durably reside there without undue hardship.…

157. b) The Reasonableness Analysis

Overall, for the reasons set out below and as demonstrated by the difficulties faced by IDPs in Central and Southern Iraq, UNHCR considers it unreasonable to expect an individual fleeing persecution in Iraq to relocate to an area in Central and Southern Iraq. Such an individual would not be able to lead a relatively normal life without undue hardship. Lack of basic facilities and difficulties with livelihoods and survival render it extremely harsh for persons to live normal lives at even basic subsistence levels within Central and Southern Iraq.

160.

…

c) Conclusion

In light of the overall situation in Central and Southern Iraq, UNHCR considers that on the whole an internal flight or relocation alternative would not be relevant or reasonable, given, in particular, the existence of widespread violence and prevalent human rights violations, the physical risks and legal barriers encountered in reaching other areas, as well as the serious difficulties faced in accessing basic services and ensuring economic survival in a situation of displacement."

54. The December 2007 Addendum concludes as follows:

"UNHCR is thus maintaining the position, set out in the Eligibility Guidelines originally, with regard to assessing the international protection needs of Iraqi asylum-seekers. In brief, that position is as follows:

With regard to Iraqi asylum-seekers from Central and Southern Iraq:

- UNHCR considers Iraqi asylum-seekers from Central and Southern Iraq to be in need of international protection.

- Iraqi asylum-seekers from Central and Southern Iraq should be considered as refugees based on the 1951 Convention criteria.

- Where such asylum-seekers are not recognized under the 1951 Convention refugee criteria, international protection should be afforded through the application of an extended refugee definition, or otherwise through a complementary form of protection.

- UNHCR considers that an internal flight or relocation alternative (IFA/IRA) in Central and Southern Iraq is on the whole not available. When, however, the availability of an internal flight or relocation alternative must be assessed in a national procedure, it should be examined cautiously, taking into account the particular circumstances of the applicant. The question of the availability of an IFA/IRA in the three Northern Governorates for individuals from Central and Southern Iraq must be carefully assessed on a case-by-case basis, taking into consideration, in particular, the relevance and reasonableness analysis in the Eligibility Guidelines.

As concerns Iraqi asylum-seekers from the three Northern Governorates:

- The international protection needs of asylum-seekers from the three Northern Governorates should be individually assessed based on the 1951 Convention refugee definition. In cases where an asylum-seeker is not recognized as a refugee under the 1951 Convention but nevertheless demonstrates protection needs for which complementary forms of protection may be appropriate, the case should be assessed accordingly.

- UNHCR considers that there is no IFA/IRA available for asylum-seekers from the three Northern Governorates in Central and Southern Iraq. Whether an IFA/IRA may be available for them within the three Northern Governorates themselves must be examined carefully on a case-by-case basis. Special attention should be paid to the categories of individuals highlighted in the Eligibility Guidelines who clearly would not be able to find an IFA/IRA in the three Northern Governorates.

In all cases, due attention should be paid to possible grounds for exclusion, in accordance with Article 1(F) of the 1951 Convention."

Our Assessment

The expert evidence

55. Before turning to set out our reasons, it is necessary that we address a specific matter relating to the expert evidence.

56. Mr Mitchell has contended throughout that the expert evidence in this case should be accepted in its entirety because of the fact that the respondent has not sought to produce any expert evidence to the contrary. In his view that entails that only the most favourable inferences in support of the appellant's case should be drawn. As we have seen he relied on two higher court authorities, Ross and O'Donnell, neither dealing with the context of asylum. We cannot accept his contention. The weight to be accorded to expert evidence in asylum-related appeals has been the subject of a number of judgments by the senior courts in recent times (see e.g. CM (Kenya) [2007] EWCA Civ 312; AS & DD (Libya) [2008] EWCA Civ 289) and it would be odd indeed to ignore their guidance in favour of decisions which are concerned with different subject-matters and where different rules of evidence prevailed. The Tribunal have expressed the view on many occasions that it would be desirable for the respondent to adduce its own expert evidence. However, its failure to do so cannot imbue expert evidence submitted by an appellant with any greater value than it merits when considered alongside the rest of the evidence. In general, the Tribunal take

the view that a country expert's opinion is to be given significant weight and if the Tribunal decides to come to a different view from an expert on key matters, proper reasons must be given.

57. And so it is in this case. In SM the Tribunal found Dr Fatah's evidence reliable on the whole, albeit lacking in objectivity in places (it was more critical of Ms Laizer). In HA (WCPI-IMIK-KRG) Iraq CG [2007] UKIAT 00087 the Tribunal reached a very similar view: see para 70 of that decision. For the most part we also take a similar view and consider indeed that we should attach significant weight to both of his reports, as well as that prepared by Dr George for this case. Their evidence was not entirely consistent on all matters, for example over whether the general security situation in the KRG was relatively stable and over whether a fair trial was ever possible in the KRG. Both were somewhat ambivalent about whether the appellant would be at risk from the PUK even disregarding the Hamakaki family's adverse interest. We are bound to say we found their view that the appellant would face adverse interest from the authorities in Baghdad far-fetched. The fact that the KRG have 10,000 soldiers in Baghdad and that the KRG authorities and those in control in Baghdad co-operate over many governmental matters does not on its own establish that the two bodies would share information about someone in the position of the appellant. We find it surprising that Dr George could feel able to say that in May 2008 things were "as bad as ever" when several indicators that he himself elsewhere saw as very important when assessing the nature and level of the conflict, in particular those relating to the number of incidents of violence and the number of casualties, were markedly down by that date. (We shall return below to points (relatively limited in number) on which we did not agree with the experts, and why.) However, we have been struck by the fact that both in their oral evidence, when taxed with specific questions put to them, showed a readiness to qualify several points they had made in their written reports that appeared overstated. If that somewhat lessened the reliability of their written reports, it did increase our confidence that they were anxious to assist the Tribunal as far as they were able. The value of their evidence to us is enhanced by the fact that both have recently visited parts of Iraq and had an opportunity to interview a number of key figures. Nevertheless, as we have noted in many cases, it is for us to decide whether the evidence as a whole, including the expert evidence, demonstrates that the risk categories in Iraq are precisely as those experts identify them or that the appellant is at risk under either of the provisions relating to humanitarian protection (subsidiary protection under the Qualification Directive) or Article 3 ECHR.

Our assessment: general risk categories

58. We broadly agree with the analysis provided by Dr George and Dr Fatah of the general political situation in the KRG. In this regard their analysis closely reflects other background sources: e.g. the COIS report refers to the fact that in northern Iraq, the ruling parties actively support the tribes in return for political loyalty (13.18). Similarly the COIS report highlights the concerns of UNHCR and others that in the KRG-administered areas there have been arbitrary arrests and detention without trial and that "in particular persons held by the security/intelligence agencies are at risk of detention without judicial review in accordance with the Law on Criminal Proceedings and are often held for

prolonged periods of time" (14.20). At para 15.20 the same COIS report quotes from an October 2005 UNHCR report noting that in the KRG some of the prisons are under the control of the political parties and are used to hold political and security cases (e.g suspected members of Islamist groups, PKK members and critics of the ruling parties.). "It is reported that the rules of due process are systematically violated in these unofficial detention centres" (15.20). It does not seem to us, however, that the evidence demonstrates a real risk of serious harm or ill treatment either for detainees generally or even for the narrower category consisting of those who have been imprisoned for committing honour crimes or blood-feud-related offences. That is because the evidence of human rights abuses committed by KRG officials against detainees is largely concerned with specific categories, those "primarily held for political, sectarian, or ethnic reasons" (US State Department Report of March 2007).

59. So far as the evidence relating to the official justice system in the KRG is concerned, we think it falls short of demonstrating that all persons who are tried in the KRG will face a process that would amount to a flagrant denial of the notion of a fair trial. It is significant, in our view, that Dr Fatah in his evidence was not wholly consistent in his assessment of this issue and that the background evidence indicating serious abuses tends (as with that concerned with mistreatment of detainees) to focus largely on specific types of persons brought to trial. Albeit Dr George was adamant that trials in the KRG are unfair, he himself notes that the Human Rights Report of UNAMI for the period 1 Jan 2007-31 March 2007 records that the main concern was with the practice of administrative detention of persons held in the custody of the Asayish (internal security) forces in the Kurdistan region, the majority having been arrested on suspicion of involvement in acts of terrorism and other serious crimes. Many, he notes, are said to be officials or supporters of proscribed Islamist groups. His report goes on to note that the Asayish "have jurisdiction over economic crimes, such as smuggling, and political crimes, including espionage and acts of sabotage and terrorism." In general we are not persuaded that the principal conclusions on the justice system or about the independence of the judiciary in the KRG reached in SM at paras 260-264 need revision. So far as concerns the approach taken by the Tribunal in SM that the authorities in the KRG are entities capable of affording protection, it is also worth noting that such an approach is now enjoined by reg 4 of the Persons in Need of International Protection Regulations SI 2525/2006 (implementing Article 7 of the Refugee Qualification Directive). So far as concerns that Tribunal's assessment, that in the KRG the authorities are in general able to provide a sufficiency of protection, we think that assessment continues to accord with the broad thrust of the background evidence.

60. Whilst our conclusions on these two general issues relating to the KRG government is relevant to country guidance, it turns out, as we shall see when we come to assess the appellant's particular circumstances, that neither has any particular bearing on his case.

61. As regards the situation of Kurds in central and southern Iraq, we know from the case of SM that the number of Kurds in central and southern Iraq is around 1.2 million (compared with 3.8 million in the KRG). We also remind ourselves that at para 279 the Tribunal in SM concluded as follows:

> "We also consider that relocation to the south for a Kurd can in general be effected without this being unduly harsh and without giving rise to a real risk in all but the most exceptional high profile cases of their relocation being brought to the attention of one of the two political parties i.e. the KDP or the PUK of whom they had a fear.

62. In seeking to persuade us to depart from that guidance, both Dr Fatah and Dr George (to name the two main sources on which Mr Mitchell relied) have contended that in parts of central and southern Iraq Kurds face being targeted by Arab insurgents and so are at real risk of persecution or serious harm per se. On the basis of their reports together with other background evidence (including the UNHCR Governorate Assessment reports adduced before us) we are prepared to accept that Kurds face difficulties pretty well everywhere in central and southern Iraq. However, although there have been examples of Kurdish communities per se facing targeted attacks, the evidence does not demonstrate that that is generally the case. On the whole a Kurd who can relocate safely within central and southern Iraq to an area where there is a significant Kurdish community can find protection there and will be able to avoid unduly harsh living conditions. What, however, of Kurds who for one reason or another are not able to relocate safely to such areas? Here, we are prepared to accept that the evidence indicates a slightly different position. As compared to a Kurd able to relocate safely to an area where there is a significant Kurdish community, a Kurd only able to relocate safely to an area where he (or she) would have to live separately from a Kurdish community would face added difficulties, by virtue of being regarded with suspicion as a stranger who stands out in ethnic, tribal and cultural and sometimes religious terms. However, we do not consider that the evidence demonstrates that for Kurds in either category these difficulties are such as to mean that merely by virtue of being Kurdish a person faces either a real risk of serious harm or that those conditions for them would be unreasonable or unduly harsh.

63. We say that for this reason. Whilst the background evidence does show that there have been a significant number of attacks on Kurds in central and southern Iraq by insurgents of one kind or another (and both Dr George's and Dr Fatah's reports document some of these incidents), and the COIS report at 8.108 does include Kurds in a list of those targeted as collaborators and "soft targets", the same list also includes Shias and it is far from being the case that evidence as a whole discloses a consistent pattern of such attacks in respect of either group. The COIS report at para 12.06 refers to Sunni Arab insurgents being committed to eliminating "Shiites, Kurds and those Sunnis who support the new government or cooperate with the MNF". Para 22.17 also indicates that whilst various armed groups have made no secret of their desire to attack Kurds, whom they consider collaborators with the United States and the allies of Jews and Christians, most attacks have been attributed to Ansar al-Sunna; not all of the significant insurgent groups have undertaken such attacks. Further, although the number of Kurds who have been forced to flee their homes or have been targeted have been significant, given the numbers of Kurds in central and southern Iraq (around 1.2 million), it cannot be said that these events are generally happening. Further, it is only in relation to some of the Kurdish communities in central and southern Iraq that there is evidence that they have been forced to flee or have suffered displacement.

64. We do not find it necessary in this case to address the submissions made by Mr Mitchell based on the evidence given by the experts as to the general security situation in Iraq, although, as already noted, we find Dr George's assessment that "the situation is as bad as ever" very difficult to square with the preponderance of the evidence we have of events since the beginning of 2007. In short we found nothing in the evidence before us in this case which caused us to take a different view than that taken by the Tribunal in KH.

Our assessment: the appellant's case

65. We are conscious of the fact that the the original Adjudicator, Mr Macdonald and the Tribunal in SM accepted the appellant's account of his adverse experiences in his home area. Their findings on those experiences are preserved and it is manifest that the appeal has been remitted back from the Court of Session on that basis. Since it will feature in what we say below, we think it pertinent to remind ourselves that part of the appellant's evidence, as set out in his October 2003 statement, in the course of describing what he did in the few days after Aso's assassination of Hamakaki, was as follows:

> "In Rania I stayed with a friend until the 16th June 2000. I found out though in those last few days that Omer[Hamakaki's] family had been looking for me and asked about my whereabouts because they had, as previously said, wanted to kill me as they believed that Aso and I had planned the murder together".

Risk in the appellant's home area

66. As already noted the appellant's account of the events which led him to flee Iraq is not in dispute. On the basis of these facts the appellant had fled the scene of the murder outside his shop, fearing that Hamakaki's family would try to take immediate revenge against him. On returning home under cover of darkness he learnt that his brother had been arrested. That same night Aso was arrested by the PUK and the Hamakaki family and was subsequently executed in Sulaimaniya by the PUK and the Hamakaki family. While in Rania the appellant learnt that the Hamakaki family were looking for him and had expressed an intention of killing him because of a belief that he was a partner in crime (see above). Nor is it in dispute that an arrest warrant (in two manifestations) was issued against him shortly after he had fled the scene of the crime. We have seen that these regard the fact that the murder took place outside the appellant's shop as "indicating that he was involved with Mr Aso Omar for the assassination of our comrade Mr Omer Hamakaki". In the light of these facts we consider it reasonably likely that if he had not fled his home area he would have met with the same fate as Aso. As regards his likely position on return, some 8 years later, we consider it would be unsafe to infer that the Hamakiki family will have ceased to have any adverse interest in the appellant purely because of the passage of time. As we have seen, the evidence regarding blood feuds indicates that they can be protracted and can, sometimes, flare up after being quiescent for many years.

67. Mr Laverty has sought to argue that whatever the appellant may have said at certain points, his case is not now put on the basis that he would face risk from the PUK or even the Jaff per se. He also reminded us of what was said at para 3 of the order by Lord Wheatley when summarising the Adjudicator's findings: "The appellant made it clear to the Adjudicator that he did not claim that he would be persecuted by the PUK". He

adverted to what the Tribunal had said in SM, namely that "[i]t was in particular observed that the appellant did not claim to fear persecution by the PUK, but rather by the Jaff…". If the appellant would not be persecuted by the PUK, argued Mr Laverty, then it was inconsistent of the appellant and the experts to maintain that he would be at risk on return because of how the KRG authorities in conjunction with the PUK, would treat him.

68. It is true that the appellant on more than one occasion said he did not fear persecution by the PUK. It is also true that the evidence regarding his own history suggests that in normal circumstances the PUK would have regarded him in a positive light. He is a former peshmerga and there has been no suggestion that his record serving as a peshmerga was tainted or that he had left under a cloud. And it is clear that the PUK must have known, given the number of witnesses to the incident, that the appellant at least played no physical part in Hamakaki's assassination. However, it is sufficiently clear that what the appellant has sought to convey all along is that the PUK of its own accord had no grievance with him. He was not intending to say that would remain the case if the Hamakaki family sought their support. In this regard we think that Dr George and Dr Fatah put their finger on the real problem in this case. Dr George in his 2007 report, whilst accepting that without the involvement of the Hamakaki family/clan, the PUK, KDP, KRG and Baghdad authorities would very probably take no adverse interest in him, went on to consider that the Hamakaki would get involved. Likewise, Dr Fatah, despite noting that the PUK would only become involved against the appellant if the Hamakaki family wanted them to and that not all the sub-tribes and clans that make up the Jaff would be motivated to assist the Hamakiki family/clan to target the appellant, nevertheless concluded that the Hamakiki family would enlist the support of the PUK and would also be able to benefit from the tribe's extensive connections to locate the appellant and take revenge.

69. So far as the outstanding warrant is concerned, we are prepared to accept that through the elapse of time or other factors the PUK of their own accord might not seek to enforce it against the appellant. However, it seems to us reasonably likely that once the Hamakaki family learnt that the appellant has returned, they would prevail on the PUK to enforce it against the appellant and to visit ill-treatment on him thereafter. The fact that the Hamakaki family were members of the Jaff tribe is likely to further influence the PUK and the KRG to do what this family wanted them to. (That does not necessarily mean that we accept that the family feud involving the appellant had developed, as both experts opined, into a tribal feud; in our view it goes too far to suggest that the Jaff collectively would have seen themselves in a feud with the appellant; but it is enough, so far as the appellant's case is concerned, that significant numbers of the Jaff would be likely to lend their support to the Hamakaki in the latter's efforts to him the appellant). Given the importance which Mr Laverty urged us to place on Lord Wheatley's recording of the appellant saying that he did not fear the PUK, we think it pertinent to note what his lordship went on to say at para 7:

> "The fact that the Jaff are a major influence in the PUK, and that the PUK have issued warrants for the appellant's return, would suggest that interest in the appellant by the PUK and the Jaff had not diminished." (para 7).

70. A key aspect of the question of whether the Hamakaki family would still wish to visit harm on the appellant relates to the evidence regarding blood feuds. We are assisted here by the COIS report at para 23.59 and by the "UNHCR position on claims for refugee status under the 1951 Convention relating to the Status of Refugees based on a fear of persecution due to an individual's membership of a family or clan engaged in a blood feud", 17 March 2006. From these sources we glean that although honour killings and blood feuds are phenomena which may sometimes overlap in practice, "honour killing" is a term used to describe a murder committed by a family member to protect the family's honour where it is considered that behaviour has brought shame on the family, such as loss of virginity, fidelity, a demand for divorce or refusal of marriage; whereas a "blood feud" is a dispute following upon the killing of a family or tribal or clan member by another family or tribe or clan. In the light of this clarification, we do not rule out that the circumstances which led in this case to the original killing may have been perceived as a matter of honour: Hamakaki having been issued a fatwa preventing him from having sex with his own wife. It has not helped us that most of the examples Dr Fatah gave to show the prevalence of blood feuds were individuals, mainly women, who had been killed or seriously harmed for so-called crimes of honour; but considering the background evidence as a whole we accept that (even when not involving crimes of honour) blood feuds still persist in the KRG and that they do not necessarily die away through the mere elapse of time. At the same time, when tackled on the subject, neither expert has sought to maintain that blood feuds never die away or resolve themselves; both acknowledged that they saw the issue of whether or not they persevered to depend very much on the surrounding circumstances and the individual case. But when we turn to consider the appellant's case we cannot ignore the fact that there was a considerable gap between the killing of Mulla Omer in 1993 and his son Aso's revenge killing in 2000 and that so far as the appellant is concerned, the Hamakaki family made known at the time of Hamakaki's murder that they "wanted to kill me [the appellant]". So in addition to a likely motivation to harm there has been a declared intention to do so.

71. We need to underline our principal reasons why we consider that the preponderance of the evidence indicates that the Hamakaki family are reasonably likely to continue to have an adverse interest in the appellant. First, as just highlighted, although the murderer of Hamakaki was caught, it is clear from the appellant's accepted evidence that the Hamakaki family even after this event still wished to visit harm on the appellant. Second, since the murder, an arrest warrant was issued in two forms. One of them clearly states that the authorities believe that the fact that the murder took place outside the appellant's shop indicated that the appellant was involved in the murder as well as Aso. We do not consider that the fact that there were said to be many witnesses to the murder would mean that the authorities would see the appellant as not involved: indeed it is reasonably likely that when they issued the arrest warrant(s) they would have known about the witnesses. Further, the authorities knew he was related to Aso and that Aso had stayed at his house in the week leading up to the crime. They would also know that the appellant had fled the scene.

72. Third, despite the accepted evidence that Aso was killed extrajudically, there is no suggestion that the KRG or PUK authorities sought to take action against those who had

killed the murderer; indeed the evidence is that either the PUK themselves killed Aso or they were complicit in his killing by members of the Hamakaki clan.

73. We accept that once Hamakaki's murderer was captured and killed there was no known further direct action of any kind by the Hamakaki family against the appellant's family, including against the other male members who would, in accordance with the customary patterns of tribal or blood feuds, be the most immediate targets. One of the appellant's brothers was arrested but was released. In the appellant's own words, he was released "because" the authorities had captured the murderer. In total the appellant has two brothers, yet neither has been harmed. That was not only the evidence of the appellant in relation to the situation up to the time he left Iraq; despite having plainly kept in contact with his family since (who have sent him documents), he has never suggested that any harm has befallen his brothers since. However, the background evidence about blood feuds does not state that more than one male member of a family is always targeted around the same time. We also know from the facts of this case that since Hamakaki's murder, his family clearly saw the appellant as the principal target for revenge, not other members of his family and the PUK has issued arrest warrants for the appellant, no-one else. In the earlier history of this blood feud it does not appear that at the time Mullah Omer was killed that the Hamakaki family targeted other members of the appellant's family as well. And it also appears that Aso had seen fit to confine his quest for revenge for many years to Hamakaki himself. Bearing in mind the lower standard of proof, we think it would be unsafe to infer from the available evidence that the Hamakaki family would not target the man they identified as an accomplice to Hamakaki's murder purely because they had not turned their hostile intentions to other male members of the appellant's family since 2000.

74. We confess to some difficulty over the evidence as to mediation. There is nothing to indicate that either the appellant's own family or the Hamakaki family have refused to mediate or to consider mediation. The appellant has nowhere suggested that his own family wishes to pursue the blood feud. On the appellant's own account of the history of this feud, which began in 1993 when Hamakaki killed his uncle Mulla Omer, the appellant's own family has lost two members (Mulla Omer and Aso), whereas the Hamakaki family has lost only Hamakiki himself. We also know from the evidence of both experts that if they were in the appellant's situation they would have sought to initiate mediation whilst still in the UK, with a view to enhancing their prospects of being safe on return. But we lack evidence as to what, if anything the appellant and/or his family sought to do by way of mediation and we must bear in mind that the appellant is someone whose evidence has been found credible; we are not entitled, it seems to us, to infer that he has concealed evidence about attempts at mediation and their outcome. The evidence about mediation is a factor which we have counted against the appellant, but it is not evidence which outweighs those factors which we counted in his favour.

75. Having found that the appellant would again be targeted for adverse treatment by the Hamakaki family on return, we must look more specifically at how this would affect his position, both in terms of the risk of being targeted and in terms of whether protection would be available to him against such targeting. Whilst we made clear earlier that we see

no reason to take a different view from the Tribunal in SM concerning the ability of the KRG authorities generally to protect their citizenry, we do not consider that the appellant would have access to such protection for two reasons. First of all, on the accepted evidence the PUK were either directly responsible for, or complicit in, the extrajudicial killing of Aso and clearly the PUK and the KRG authorities in the appellant's home area are closely intertwined. Whether a suspect is obviously guilty or not, the authorities of a state can be expected to protect him against extrajudicial killing. Secondly, we do not think that the fact that the PUK have since then issued arrest warrants against the appellant would mean that on his return they would deal with the appellant's case without reference to the Hamakaki family. We recognise that the Tribunal in SM were of the view that having issued the arrest warrants the PUK would deal with the appellant without him being placed in the hands of the Hamakaki and/or the Jaff. However, we respectfully agree with Lord Wheatley that the Tribunal's reasoning on this point was unconvincing. Not only had the PUK not acted according to the book before (when Aso was killed), but we know from the background evidence that they are closely allied with the Jaff and that Hamakaki was a former PUK organiser. It is true that the appellant was himself a peshmerga, but he was clearly at a lower rank and, unlike the Hamakaki clan, his tribe had no influence with the PUK. We note again, and endorse, Lord Wheatley's observation at para 10 of his order:

> "As is often the case in matters of this sort the issues which determine whether or not there is a risk of persecutory ill-treatment are inextricably bound up with the question of whether there is adequate provision to protect against that risk. In the present case the considerations which affect each of these issues are almost identical. The risk to the appellant is not that he would be apprehended by the PUK in execution of the warrants they have issued, but that the PUK would thereafter hand him over to the Jaff. The question of sufficiency of protection depends therefore on whether the PUK would be able to insist that they retain control of any process that follows on from the appellant's apprehension, and do not find themselves constrained to hand the appellant over that of the Jaff. It is in this respect that the history of what happened to the appellant's cousin [Aso] is again of considerable significance."

76. For the above reasons we consider that the appellant, when he fled his home area, faced a real risk of serious harm and ill treatment and that, if he returned there, he would again face the same risk. We consider that he will do so because on return to his home area he will come to the notice of the Hamakaki clan and will face a real risk of adverse treatment from the Hamakaki aided by the KRG authorities or the PUK or the Jaff tribe, or all three.

The issue of internal relocation

77. Before we can deal with this issue, we must address whether we are entitled to consider it at all. We bear in mind Lord Wheatley's emphatic statement in para 10 of his order that:

> "Finally, we should make it clear that in this appeal the question of internal relocation, should the risk of persecutory ill-treatment to the appellant be established, and the protection available against that risk being (sic) found to be inadequate, was not dealt with in the course of the hearing. Counsel for the respondents conceded that the matter had not been put before the Tribunal, and therefore could not be raised now".

78. Mr Laverty pointed out that this statement appears to have been jettisoned a few lines on in this order, when, Lord Wheatley stated that:

> "[f]or the avoidance of doubt, we consider that the question of whether there is a risk of persecutory ill-treatment to the appellant should he return to Iraq, the sufficiency of protection available to him, should that risk be established, and the matter of internal relocation should that protection appear to be inadequate, should all be considered by the reconstituted Tribunal".

79. We recognise that there is an apparent, if not stark, tension between these two statements. However, neither party has sought to dispute that at the hearing before Lord Wheatley Counsel had made the concession described. Further, the only paragraph where any reasoning is given for conclusions about internal relocation is para 10 and those reasons are indeed correct: the issue of whether the appellant had an internal relocation alternative had not been put before the Tribunal in SM. And Lord Wheatley's opinion that the issue "therefore could not be raised now" is supported by other higher court authority: see AM (Serbia) [2007] EWCA Civ 16 and BB (Guinea) [2007] EWCA Civ 129.

80. We recognise that prior to the hearing the Tribunal (a senior immigration judge) gave directions which specified internal relocation as one of the issues to be considered by the Tribunal, but such a statement did not, and could not, bind us as to the proper approach in law. For the reasons given we consider that it is not now open to the respondent to raise the issue of internal relocation. Accordingly our finding that he faces a real risk of serious harm and treatment contrary to Article 3 in his home area is sufficient for him to succeed in his appeal on humanitarian protection and Article 3 grounds.

81. Given, however, that the Tribunal did seek and that we heard submissions relating to the issue of internal relocation, we will go on to say what would have been our finding on internal relocation had we considered it a live issue before us.

Within the KRG

82. Let us first of all consider the appellant's situation if he sought to relocate elsewhere within the KRG. Part of our finding is that the PUK, prompted by the Hamakaki family, would still have reason to enforce their warrant for arrest against the appellant. However, we do not think the appellant will necessarily be at risk throughout the KRG because of any records held on him. (And we consider it must be doubtful whether any records would be held on him: although we are told that since 2003 the KRG authorities maintain computerised records, there is no indication that these contain all the data previously held manually going back to 2003; given the great preoccupation of the KRG authorities with insurgents we are prepared to accept that they will have transferred records relating to persons regarded as terrorists or risk to state security, but we are not persuaded we can accept more than that.)

83. Rather we think the appellant would be at risk because his presence would become known to the Hamakaki family who would be motivated to then enlist the PUK and the KRG authorities, and their Jaff connections, to detain and ill-treat the appellant. We accept that also on this scenario the appellant, even if not exposed to direct revenge from the Hamakaki (by for example being handed over to them), would be likely to be detained by

the PUK authorities and, since the latter would know that the Hamakaki family wanted him detained, they would be likely to ill treat him. He would not be in the position of an ordinary detainee.

Central and southern Iraq

84. We turn to consider the appellant' situation if he sought to relocate to parts of central and southern Iraq.

85. Whilst we do not accept the contention of the experts that the appellant would be at risk in central and southern as a Kurd per se, we have accepted that for a Kurd able to relocate safely only to areas where he would have to live separately from a Kurdish community there would be a greater degree of difficulties: see para 62. That acceptance is important in this case because we do not consider that the appellant could relocate safely to areas where there was a significant Kurdish community.

86. That is not to say that we think the appellant, in areas of central and southern Iraq where there are Kurdish communities, would be at risk of being identified by the PUK directly or immediately. Although Dr Fatah was adamant in several passages in his report that the PUK had influence throughout Iraq, his own report elsewhere makes clear that it is only in certain areas that the PUK has any effective power and control: Even if the appellant's name was on records held by the PUK or KRG authorities in the KRG (which we doubt), we think that at most it would only be in other areas of central and southern Iraq where the PUK had power and influence, such as Kirkuk, that there might be access to those records.

87. Nor do we think it helpful to portray the appellant as likely to be "pursued" in central and southern Iraq by the Hamakaki, at least in the ordinary sense of that word (Dr Fatah stated at para 309 of his May 2008 report, "[i]t should be clear that the entire Jaff would not pursue the ill-treatment of [the appellant], only the family and clan of Hamakaki".) Even though we have accepted that the Hamakaki family would continue to wish to take revenge on the appellant, it plainly does not have the means to conduct a hunt for any suspect outside its own immediate environs; and, outside of the KRG, we seriously doubt that the PUK or the KRG authorities (through records or other means) would see pursuing someone who is wanted for conspiracy to murder in the context of a blood feud in 2000 as any kind of priority in Iraq during the relevant parts of 2008.

88. However, that is not the end of the matter. In deciding whether the appellant would be safe in such communities, a central question must be whether he would be identified as someone who had crossed the Hamakaki clan. From the background evidence we have about the tribal and clan based nature of Iraqi society, we think it reasonably likely that fellow-Kurds would quickly come to hear that the appellant was a Sorani-speaking Kurd who hailed from the area around Dukhan/Rania and his family and his tribal affiliations would also be quickly established. His background would become known. Once that identification was made, we consider that it would only be a matter of time before it was relayed back through family and Jaff tribal networks to the Hamakaki family that the appellant had returned to Iraq and they would find out where he was. Once they knew

where he was, we consider it reasonably likely that they would then be able to gain the assistance of local Kurds connected with the PUK or the Jaff in making direct contact with and apprehending him: at this point (and this point only) talk of "pursuit" outside the KRG does make sense.

89. We do not need to address the issue of whether the authorities in central and southern Iraq provide sufficient protection to their populations generally. Whether they do or they do not, they would not, in our view, be willing or able to afford effective protection to someone in the appellant's position, who appeared to be targeted by fellow-Kurds. Whilst we have not found that Kurds per se face a real risk of persecution in central and southern Iraq, it is clear that they are perceived as outsiders and that the authorities at a local level, whose protective functions are extremely beleaguered dealing with insurgents, would not devote any resources to protecting someone in his position, especially as they would know he was a fugitive from justice from another part of the same federal state.

90. That leaves as the only possible place of relocation where the appellant would be safe as those areas of central and southern Iraq where there are not significant Kurdish communities. Here we have to consider whether it would be reasonable to expect him to relocate to such areas, given his personal circumstances: see para 339O of HC 395 as amended. We remind ourselves that the appellant is still a relatively young man, in his late 30s, that he has no physical or mental problems and that he has an occupational skill (hairdressing). Although we are prepared to accept, particularly bearing in mind the UNHCR evidence, that in central and southern Iraq Kurds who have to live apart from their own ethnic groups and communities are less likely to able to gain protection and may face suspicion, distrust and even a certain degree of hostility from state and non-state actors locally, we do not consider that the evidence as a whole demonstrates that in general they face a real risk of persecution or serious harm or ill treatment simply because of their Kurdish and outsider identity. As regards possible problems of documentation, we note that since being in the UK the appellant has been able to obtain from his family his national ID card. We see no good reason to think he would not be able, when the time came, to obtain any further documentation from Iraq which he may need to enable him to move around the country in accordance with requirements governing documentation.

91. For the above reasons we conclude that had we considered the issue of internal relocation to be a live one in this appeal, we would have concluded that the appellant did have a viable option of internal relocation in those parts of central or southern Iraq where there are no significant Kurdish communities. But, of course, we have not considered this issue to be a live one in this appeal: our primary decision is that the respondent earlier conceded the issue of internal relocation and so in this appeal the appellant is entitled to succeed notwithstanding what we have found in the alternative.

92. For the above reasons we conclude:

the Adjudicator materially erred in law;
the appellant's appeal is allowed on humanitarian protection and Article 3 grounds.

Signed

Senior Immigration Judge Storey

APPENDIX: BACKGROUND MATERIALS

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General Country Report on Iraq of the Dutch Ministry of Foreign Affairs, 14 December 2004

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US State Department Report, March 2006

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US State Department, Iraq Country Report, March 2007

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UK Home Office Border and Immigration Agency, Country of Origin Information Report – Iraq, 8 January 2008