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Appeal No. HX53224-01  
MH (Article 3 – Blind Person - KAA) Iraq CG [2002] UKIAT 07196

## **IMMIGRATION APPEAL TRIBUNAL**

Date of Hearing : 16 January 2003

Date Determination notified:

...13 March 2003...

Before:

Mr G Warr (Chairman)  
Mr M E A Innes  
Mr M G Taylor

Secretary of State for the Home Department

**APPELLANT**

and

**MAHMUD ABDALLA HAMA**

**RESPONDENT**

### **DETERMINATION AND REASONS**

1. The Secretary of State appeals the determination of an Adjudicator (Mr I.J. French) who allowed the appeal of Mr Mahmood Abdalla Hama (hereinafter for convenience referred to as the appellant) against the decision of the Secretary of State to refuse his application for asylum. The Adjudicator dismissed the asylum appeal and allowed the appeal on human rights grounds only.
2. Mr J. Jones appeared for the Secretary of State while Mr R. Frank, of counsel, instructed by James Pearce & Co., solicitors, appeared for the appellant. Counsel had been instructed late in the day but was able to present the appellant's case with his usual skill and ability and we are fully confident that the appellant has in no way been disadvantaged by the clerical oversight that led to counsel being instructed late.
3. The issue in this case is in fact a very narrow one. The appellant has been a longstanding member of the Patriotic Union of Kurdistan (PUK) in the Kurdish Autonomous Area of Iraq (the KAA). Unfortunately in April 1988 he was captured by the Iraqi forces and ill-treated to the extent that he has lost 60% of his vision in his left eye and 80% of his vision in his right eye and he has registered

blind in the United Kingdom. Following his release from detention he had three operations on his eyes which were apparently of little help. The Adjudicator rejected the appellant's account of spying activities between 1991 and 1999. There has been no appeal from that aspect of the Adjudicator's decision. The Adjudicator considered and rejected the appellant's case as a former active PUK member in the light of the ceasefire between the KDP and the PUK. He would not face persecution for a Convention reason because of that. Again, there is no appeal outstanding from that aspect of the Adjudicator's decision.

4. The Adjudicator allowed the appeal for the reasons given in paragraph 27 of his determination which reads as follows:

‘This appellant is blind. There can be no doubt about that. Not only are there medical certificates produced from a hospital in Iraq where he had three operations on his eyes, but he is registered blind with the UK authorities. He appeared to me to handle his disability with dignity but it does make his position radically different from that of a fit and active young man if returned to the KAA. Short of begging on the streets or the good fortune of meeting a benefactor the only way that this man would be able to survive in the KAA would be if he were returned to his family in Derbendikhan. I have no undertaking or other assurance from the respondent that there would be any intention to return him to that location if indeed it were practical to do so. The only undertaking I have is that the appellant would be returned to the KAA and not by way of the area under the control of the Baghdad regime. Given this man's disability if he was simply deposited over the border from Turkey, Syria or Iran into the KAA area he would to my mind be at real risk of suffering inhuman or degrading treatment. In considering whether the minimum level of severity is reached I have to consider the physical situation of the appellant. This man faces enormous burdens in making his way in the KAA, other than in his hometown or with the support of his family. Although there is some system of civil administration in the KAA there is no system of social security as such and the appellant would be likely to be reduced to penury or to begging, possibly to both. There is a real risk of him facing conditions which would amount to inhuman or degrading treatment.’

5. The grounds of appeal to the Tribunal claim that the Adjudicator had erred in holding that the appellant's Article 3 rights would be breached by his return. He had said at the hearing before the Adjudicator that prior to leaving Iraq he had been supported by his father and no doubt that support would continue on his return. The Adjudicator's approach was speculative and failed to take into account the fact that the appellant had travelled through the KAA to the United Kingdom and there was no reason why he could not make his way to his home

area upon return. The Adjudicator had not taken account of the fact that the appellant had family in the KAA including a father, wife and six children who might be able to assist him returning.

6. Mr Jones submitted that the Adjudicator's findings were indeed speculative. It was speculative to assume he would simply be deposited near the border. The Adjudicator had focused on the logistics of him getting to his home area and there was no real risk of inhuman or degrading treatment. The threshold had not been reached.
7. Mr Frank submitted that the appellant would not necessarily receive the support of his family. The Adjudicator was not fanciful to suggest that the appellant would not get any help and would be reduced to begging. There was no evidence as to whether the family was still alive or still in the area. The Adjudicator had considered the physical situation of the appellant in paragraph 27 of his determination. The appellant's rights would be infringed if his family was not there to support him.
8. Mr Jones pointed out that in paragraph 11 of the determination the Adjudicator had stated in terms that the appellant came from Derbendikhan where his father had 'and still has a vegetable shop'. There was no evidence that the appellant's family would not support him.
9. We reserved our determination. We have carefully considered the issues in this case which, as we have observed, fall within a fairly narrow compass. It does appear to us implicit in paragraph 27 of the determination that the Adjudicator accepted that the appellant would be looked after by his family in Derbendikhan. The Adjudicator was concerned with the prospect of the appellant being dumped at the border. We do not consider that approach to be correct, indeed it is purely speculative. It would be wrong to assume that the Secretary of State would remove someone and dump them in such circumstances. In cases involving the return of children, for example, arrangements are made with the receiving country. In this case, the appellant has a family in the KAA and it appears from the Adjudicator's determination that the father has a shop in the home area. The appellant has a wife and six children and, as we have observed, it appears implicit that the Adjudicator accepts that the appellant would be looked after by his family. It defies commonsense to suggest that the appellant would not receive some assistance from a member of his family in getting home. As the grounds of appeal point out, the appellant was able to leave Iraq and, on his account, went to Turkey and found an agent in Istanbul to make the arrangements to come to the United Kingdom. He had lived for very many years in the KAA as a blind person. There is no basis in our view for the assumption that returning him to the KAA would breach his Article 3 rights. The Adjudicator's findings on the issue are wholly unsustainable.
10. The appellant has not made out his case to the required standard under Article 3.
11. For the reasons we have given, the decision of the Adjudicator is reversed and the appeal of the Secretary of State is allowed.

**G. WARR  
VICE PRESIDENT**