

LSH

IM (Risk - PUK/KDP – Cessation
of Conflict - Traitor) Iraq [2003]
UKIAT 00101

Heard at Field House
On 24 September 2003

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

.....24/10/2003.....

Before:

Mrs J A J C Gleeson (Chairman)
Mrs E Morton

Between

APPELLANT

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

Representation:

For the appellant: Mr I Rene, of Counsel, instructed by
Lawson Adefope, Solicitors

For the respondent: Mr A Hutton, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Secretary of State appeals with leave against the determination of an Adjudicator, Mr D J Jefferson, who allowed the respondent's appeal against refusal of asylum and refusal to grant leave to enter.
2. The appeal was dismissed both on asylum and on human rights grounds, with an adverse credibility finding. Confusingly, the Adjudicator also made a recommendation that the appellant not be returned to Iraq until it was possible to be confident that he would not be at risk if returned there.

3. The grounds of appeal assert that the Adjudicator misdirected himself in law by applying the wrong standard of proof, by not applying the Chiver decision, by attaching insufficient weight to an arrest warrant produced by the appellant at the hearing (which is not on the file and is not before the Tribunal), and in finding that the appellant's claimed fear of persecution was for a non-Convention reason.
4. The Tribunal has taken into account the grant of leave and read the determination. By agreement with the representatives of both parties, we analyse the risk to this appellant as though he were to be returned today, and we treat his core account as credible for the purpose of establishing whether the arguments put forward on the appellant's behalf would now make a material difference to the outcome of his appeal. There has plainly been a great change in circumstances in Iraq since 27 November 2002 when this determination was promulgated, due to the war and régime change effected by the Coalition.
5. The core of this appellant's claim was that as a former member of the PUK since 1999, he was sent to Sulaimaniyah to deliver a letter with two colleagues, was ambushed on the way, and that one colleague was killed in the firing. He escaped with his remaining colleague and was accused of treason by his local PUK commander, on the basis that he was working for the KDP opposition. He contended below that he could not be safe either in the KDP area of the Kurdish Autonomous Zone ('KAZ'), where he would be regarded as a traitor, or in the PUK area, where he would still be regarded as an opponent.
6. The appeal was heard on 2 October 2002, just days before the re-establishment of the Kurdish Parliament and the beginning of a gradual reunification of the KAZ. Progress has been steady since then. The respondent's CIPU Country Report Bulletins for Iraq in 2003 all reflect that the KDP and PUK have agreed to merge their local administrations in a bid to wield greater influence in Iraq's national politics. The PUK leader Jalal Talabani was chosen to travel to Baghdad to represent all Kurds in a meeting with the Coalition forces.
7. The Immigration Appeal Tribunal determination *Mohammed* (HX/13132/2001) promulgated as long ago as 20 December 2002 concluded that domestic protection was available within the two separate territories from the KDP and the PUK. The Tribunal has considered Bulletin 7/2003 of August 2003 which will no doubt shortly be incorporated into the October 2003 Country Report for the Secretary of State. The KDP's Nechirvan Barzani is the new Prime Minister of the unified Kurdistan Regional Government. Adnan Mufti of the PUK will be his Deputy.

8. On the present factual matrix in the KAZ, the appellant's argument simply cannot succeed today, since there is now no conflict between the PUK and KDP in the region. The present evidence is that domestic protection is available across the KAZ and that given the end of the conflict and the co-operation between the KDP and the PUK there is simply no realistic prospect of risk to this appellant on return. The respondent's CIPU Country Report Bulletins state clearly that persons in the KAZ who have a localised problem can safely and reasonably relocate within former KAZ to Kurdistan, and to limited areas outside the former KAZ (3.14).
9. Given the régime change in Iraq proper, and the current de facto occupation of Iraq by Coalition forces, it cannot be said that the Ba'ath Party hostility to Kurds in the north (whether supporting the KDP or the PUK) is now to be treated as a factor.
10. It follows that even if the Adjudicator's determination is defective in the manner stated, that would not now affect the outcome of this appeal.
11. Appeal dismissed.

**Mrs J A J C Gleeson
Vice President**

Date: 27 June 2007