Asylum and Immigration Tribunal

SA (Entry clearance application in Jordan – proportionality) Iraq CG [2006] UKAIT 00011

THE IMMIGRATION ACTS

Heard at Newport (Columbus House)	Determination Promulgated
On 7 December 2005	On 19 January 2006
Prepared 7 December 2005	

Before

Mr H J E LATTER (Senior Immigration Judge)
Mr N J OSBORNE (Immigration Judge)

Between

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss S Latimer of the Immigration Advisory Service
For the Respondent: Mr B Bruten, Home Office Presenting Officer

In the light of evidence now available the Tribunal is satisfied that generally it is not disproportionate to a legitimate aim within article 8 (2) to require an Iraqi national to return to Iraq and travel to Jordan to make an application for entry clearance. There is significant further evidence to show that the guidance in KJ (Entry Clearance – Proportionality) Iraq CG [2005] UKIAT 00066 no longer applies.

DETERMINATION AND REASONS

1. This is the reconsideration of an appeal against the respondent's decision made on 16 January 2005 to remove the appellant as an illegal entrant. His appeal against this decision was originally heard by an immigration judge, Mr K.R. Doran, on 18 July 2005. Reconsideration was ordered on 17 August 2005.

Background

2. The appellant is a citizen of Iraq from Kirkuk. He made an illegal entry into the United Kingdom on 19 December 2003 claiming asylum on arrival. His application was refused on 5 February 2004. An appeal against this decision was dismissed by an adjudicator on 11 May 2004. The appellant married on 24 July 2004. His wife is a citizen of Iraq resident in this country. The appellant made an application for leave to remain on this basis but this was refused for the reasons set out in the reasons for refusal letter dated 14 January 2005.

3. The appellant had based his claim for asylum on his membership of the Ba'ath Party and his alleged persecution in Iraq as a result. He said that his father had been a senior member of the party and had pressured him into joining in 1995. He said that he had become a senior member of the Ba'ath Party in 2001. He had been responsible for arresting draft evaders. For this reason he had developed a bad relationship with both the local Kurdish and Arab communities. He claimed that his father had been killed by the PUK despite an amnesty the PUK had declared for Ba'ath Party members. The appellant then fled to a friend's home before leaving Iraq with the help of an agent on 20 April 2003. He travelled to Turkey where he remained until December 2003 and then came to the United Kingdom.

4. The Adjudicator who heard the appellant's asylum appeal on 11 May 2004 did not find him to be a credible witness. He disbelieved the appellant's account and described his claim as opportunistic. He did not accept that the appellant had ever been a member of the Ba'ath Party and found that he could return to Kirkuk.

5. When the appellant arrived in this country he was married. He had a wife and two children who remained in Iraq. He divorced his wife in Iraq by Talaq in about May 2004 and married his present wife on 24 July 2004. He then made the application for further leave to remain on this basis. The respondent's refusal letter refers to the guidelines in DP3/96 for dealing with marriage applications from those who have overstayed. The appellant's case did not fall within that guidance as his marriage on 24 July 2004 did not predate by two years the service of notice of liability to removal. The respondent refused to exercise his discretion outside the concession, concluding that there were insufficient compassionate circumstances to justify such a course. It was the

respondent's view that removal would not be disproportionate to a legitimate aim. It was asserted that it would be reasonable for the appellant's wife to accompany him on return to Iraq. He could make an application for entry clearance. There would be no interference with their family life. This assertion was withdrawn at the hearing before the immigration judge. It was accepted that it would not be reasonable for the appellant's wife to return with him. The respondent conceded that the appellant had established a private and family life but asserted that any interference by requiring the appellant to return to Iraq to make an application for entry clearance would be a proportionate exercise of immigration control.

The hearing before the Immigration Judge

6. On the basis of this concession, the judge said that the sole issue for him was whether or not the case was so exceptional on its particular facts that the imperative of proportionality demanded an outcome in the appellant's favour notwithstanding that he had no claim to remain in the United Kingdom under the existing Immigration Rules. He found that the appellant, then aged 33, had married his wife on 24 July 2004 at a time when his wife was aware that he had no legal status to remain in this country. He had two children from his first marriage in Iraq who lived with his mother there. He described the appellant as a healthy individual who may suffer from asthma but was not receiving ongoing treatment of either a psychological or physical nature. He did not wish to return to Iraq to make an application for entry clearance under the rules as he and his wife did not wish to be separated. The appellant also believed that if he returned to Iraq he would suffer the same fate as his father who he maintained had been killed by the PUK following the ending of the war in Iraq in 2001.

7. The judge held that the circumstances of the appellant in the United Kingdom on a personal basis did not amount to exceptional circumstances of the kind envisaged by the Court of Appeal in *Huang* [2005] EWCA Civ 105. The appellant's belief that he would suffer the same fate as his father if returned to Iraq could not come into the equation as his claim had been comprehensively dismissed by the Adjudicator at the appeal hearing in April 2004. There was no further evidence to suggest that those finding should be reconsidered within the terms set out in *Devaseelan* [2002] UKIAT 00702.

8. The judge said that the only factor requiring further consideration was whether the appellant could travel from Iraq to a neighbouring country to make an application for entry clearance without adverse consequences or a violation of his human rights. He referred to the Immigration Appeal Tribunal determinations in *MN (Entry clearance facilities - availability) Iraq* [2004] UKIAT 00316 and *HC (Availability of entry clearance facilities) Iraq* [2004] UKIAT 00154 where the Tribunal held that the possibility of any danger involved in travelling from Baghdad to Iran did not establish a reasonable likelihood that an

appellant could not make the journey without adverse consequences sufficient to amount to a violation of his human rights. These decisions were contrasted with the country guidance determination in *KJ (Entry clearance - proportionality) Iraq CG* [2005] UKIAT 0066 which concluded, primarily on the basis of a letter from the UNHCR written in January 2005, that the evidence showed that it could not be argued that it was proportionate to require an appellant to return to Iraq to apply for entry clearance from a neighbouring country because of the dangers in travelling by road or flying to another country.

9. The judge took into consideration a letter from the British Embassy in Amman dated 20 March 2005 which said that between the period April and October 2004, 3,301 applications were made in Jordan by Iraqi nationals for entry clearance to the United Kingdom and that between October 2004 to mid-March 2005 3,399 such applications were made. The embassy was expecting to see a massive increase in applications during the summer period. The letter referred to the fact that road travel between Baghdad and Amman, Damascus and Beirut remained uninterrupted. Royal Jordanian and Syrian Airways flew regular services into Baghdad and Gulf Airways also operated regularly into Dubai. Those travelling from northern Iraq would usually travel across into Syria as the fastest and most convenient route. It would be easier for an Iraqi national holding a UK travel document to enter Syria than Jordan.

10. On the basis of this information the judge was satisfied that the dangers of travelling to Amman were not as real as supposed in the UNHCR letter of January 2005 and that the circumstances had changed to the extent that it was now proportionate to remove an Iraqi national to make such an application. He commented that many thousands had been doing so either in Jordan, Dubai or Syria. On this basis the appeal was dismissed.

<u>The grounds of application for a review</u>

11. In his grounds the appellant says that the details about travelling from Baghdad to Jordan and Syria were not provided. The Home Office representative had not produced these at court. The grounds go on to argue that Baghdad is not safe. The road from Baghdad is but not Baghdad itself. There had been bomb attacks and it would not be safe for the appellant to return and make an application. Reconsideration was ordered by the Senior Immigration Judge on 17 August 2005. He commented that it was arguable that there was discordance between the contents of the letter of 20 March 2005 from the British Embassy in Amman and the travel advice concerning Iraqi attacks in the grounds of appeal which was of clear relevance to the judge's assessment of risk on return. He added that the Tribunal would expect the parties to provide as much up-to-date evidence as possible at the hearing. The appellant was strongly advised to obtain legal representation.

The error of law

12. At the hearing before us, the appellant was represented by Miss Latimer of the Immigration Advisory Service. She submitted a bundle of documents (A) indexed and paginated 1-34. Mr Bruten produced a bundle (R) paginated 1-17. Miss Latimer submitted that the judge was wrong to distinguish the case of *KJ* on the basis of the letter from the embassy in Amman produced by the respondent at the hearing. The judge had not properly dealt with the risks identified in *KJ*. He had failed to take into account the travel advice from the Foreign & Commonwealth Office issued on 26 July 2005. We asked Miss Latimer what was meant by the assertion at the beginning of the grounds that the details about travelling from Baghdad to Jordan and Syria were not provided at the hearing. She said that her instructions from the appellant were that the letter had been referred to at the hearing and only subsequently provided to the appellant. We note that there is a copy of a letter on the appeal file dated 19 July 2005 written by the Presenting Officer to the appellant and his wife enclosing a copy of the letter dated 20 March 2005.

13. Mr Bruten submitted that the determination did not disclose any material error of law. The judge had looked at the country guidance case of *KJ*. He had been entitled to distinguish it in the light of the letter 20 March 2005. Circumstances had changed. Taking into account the further evidence, the judge had been entitled to conclude that removal would be proportionate. There was no reference in his determination to the Foreign Office travel advice but even if that had been before him it would not have affected his decision. He was not able to say whether the letter of 20 March 2005 had been produced at the hearing.

14. We must consider firstly whether there has been a material error of law. When ordering reconsideration the Senior Immigration Judge commented that it was arguable that there was discordance between the contents of the letter of 20 March 2005 and the travel advice concerning Iraq attached to the grounds of appeal. We are satisfied that the point which concerned him was whether the travel advice had been taken into account. The judge has identified in paragraph 5 of his determination the documentation produced both by the respondent and the appellant. The only document produced by the appellant was a skeleton argument prepared on his behalf dated 7 June 2005. This is a letter from the appellant's wife. It is not altogether clear from the appeal file when the documents relating to travel advice were submitted. However, they relate to advice from the Foreign & Commonwealth Office updated 27 June 2005, still current at 26 July 2005 and from the British Embassy in Amman updated 5 July 2005, still current at 25 July 2005. The documents also appear to have been downloaded from the internet on 26 July 2005. They are annexed to the grounds of appeal against the judge's decision. For these reasons we are satisfied that these documents were not in fact put in front of the judge at the hearing

and it follows that he did not err in law by failing to take them into account.

15. However, it is also argued that evidence was referred to at the hearing which was only subsequently served on the appellant. In his determination the judge said that the respondent 'now produces' a letter from the Embassy in Amman dated 20 March 2005. It is not clear from the determination or the record of proceedings whether the letter was produced at the hearing or referred to and subsequently produced. But it is clear that the day after the hearing the Presenting Officer sent a copy of the letter to the appellant with a covering letter saying 'Please find enclosed the letter that was referred to in the hearing by the Home Office representative'. Whether the letter was produced on the day or referred to and then supplied the following day to the judge and the appellant, we are satisfied that the appellant did not have a proper opportunity of dealing with the points raised. He was unrepresented at the hearing. The only purpose of supplying him with the letter would be to enable him to respond to the points made in that letter. His response in fact came in his application for review and we are satisfied that because he was supplied with this letter, he then obtained the travel advice from the Foreign and Commonwealth Office and the embassy in Amman, which he submitted with his application for review. We are satisfied that there was a procedural irregularity at the hearing which caused unfairness as the letter dated 20 March 2005 was produced at a very late stage in the hearing and the appellant did not have a proper opportunity of responding to it before the determination was issued. The letter was clearly material as it formed the basis on which the judge distinguished the guidance in *KJ*.

16. We are therefore satisfied that there was an error of law material to the determination.

Submissions on whether the appeal should be allowed or dismissed

17. We went on to consider whether the appeal should be allowed or dismissed. We referred the parties to two recent Court of Appeal judgments, *R v Secretary of State [2004] EWCA Civ 1328*, and *ZT [2005] EWCA Civ 1421*. Mr Bruten produced copies of *Huang, Dbeis [2005] EWCA Civ 584*, and *SM and Others (Kurds - protection - relocation) Iraq CG 2005 UKIAT 00111*. Both representatives indicated that they were ready to proceed with their submissions.

18. Mr Bruten submitted that the determination in *KJ* had been based on the evidence in the UNHCR letter of January 2005. The Tribunal had held on the basis of that evidence that it would not be proportionate to require an appellant to return to Iraq for entry clearance. Mr Bruten submitted that there was now further evidence not only in the letter of 20 March 2005 but also in a further letter at R1-2 from the British Embassy in Amman dated 16 June 2005. The Embassy had received a large number of applications from Iraqi nationals. These applications

did not take long to process. There were now more flights between Baghdad, Amman and Damascus. Those travelling from northern Iraq could travel into Syria and then on to Jordan. There would be no need for them to use Highway 10, the route considered at length in the UNHCR letter of January 2005. The appellant would not have to use this route. He referred to *SM* and to its findings that there would be a sufficiency of protection in the KAA. It could not be argued that all travel in Iraq was so dangerous that Article 3 would be engaged. Proportionality was a very high test. This was confirmed by the judgments of the Court of Appeal particularly in *ZT and Dbeis*. Even if there was an interference with the appellant's private and family life his situation could not be described as truly exceptional.

19. Miss Latimer submitted that there were very real travel difficulties. It was unreasonable to expect the appellant to travel to Amman to make an application for entry clearance. The current travel advice from the Foreign and Commonwealth Office at A9-14 advised against all travel to Baghdad and its adjacent provinces. The security situation remained dangerous and road travel in Iraq was described as highly dangerous. The appellant could only make an application for entry clearance by undertaking a serious risk to his own health and safety.

20. The appellant said that he wished to add something. He would not be able to return to Iraq in safety. He could not go back to Kirkuk because of what had happened in the past. He would be at risk of being arrested. He said that he was 100% certain he would be killed. He loved his wife and did not wish to leave her.

The law

21. The issue for us to consider is whether removing the appellant to Iraq would be a breach of his rights under Article 8. A number of separate issues arise. These were identified in by Lord Bingham in *Razgar* [2004] UKHL 27. In a removal case based on Article 8 grounds, the Tribunal must identify whether there is private or family life and whether the interference will have consciences of such gravity as potentially to engage the operation of Article 8 and amount to an interference. We must also consider whether such interference is in accordance with the law and necessary for one of the legitimate aims identified in Article 8(2) and finally whether the interference is proportionate to the legitimate public end sought to be achieved. In *Razgar* when considering the issue of proportionality Lord Bingham said:

> 'A decision taken pursuant to the lawful operation of immigration control will be proportionate in all save a small minority of exceptional cases, identifiable only on a case by case basis.'

22. The issue of proportionality was considered further by the Court of Appeal in *Huang* where the court held that an immigration judge should allow an appeal against removal or deportation brought on Article 8 grounds only if he concluded that the case was so exceptional on its

particular facts that the imperative of proportionality demanded an outcome in the appellant's favour notwithstanding that the appellant had no claim under the Immigration Rules. The fact that this is a high test has been emphasised by the Court of Appeal in a number of recent judgments including *ZT, Dbies* and *R.*

Tribunal authorities relating to travelling from Iraq to Jordan to make an application for entry clearance**.**

23. In *HC* the Tribunal held that it was a viable option for an Iraqi citizen to travel to Jordan to apply for entry clearance and that the difficulties involved did not make a decision by the Secretary of State to remove disproportionate. That appeal considered the evidence available as at 30 March 2004. The position was looked at again by the Tribunal in *MN* as at September 2004. No evidence was produced to persuade the Tribunal that it would be appropriate to take a different view from *HC*. Taking into account the totality of the evidence before it, the Tribunal found that even if there were insuperable obstacles to the family travelling to Iraq, it would not be disproportionate to the right to family life for the appellant to be required to return to his own country where appropriate facilities existed at the embassy in Jordan for making an application for entry clearance. This issue was considered again in *KJ* in February 2005. The Tribunal had further evidence in a letter from the UNHCR written in January 2005. The Tribunal accepted that the road from Amman to Baghdad was unsafe. There were numerous risks to passengers including insurgent attacks and vehicle ambushes. There were random checkpoints manned by militia, bandits and unpaid police. No official United Nations travel was allowed on this road for security reasons. This letter said that travelling on this road represented hardship beyond description. As to the safety of air travel, it was the understanding of the UNHCR that Royal Jordanian Airlines was the only airline flying into Baghdad. Most people chose not to fly. For those who did choose to travel by air, as the road between Baghdad International Airport and the centre of the city was known as ambush alley, international personnel had no choice but to use military helicopters to get to and from that airport from the fortified green zone. In the light of this evidence the Tribunal found that it was not proportionate to require the appellant to return to Iraq to apply for entry clearance.

Further evidence on travelling from Iraq to Jordan

24. There is now further evidence available firstly in the letter dated 20 March 2005 from the British Embassy in Amman. This says that road travel between Baghdad and Amman, Damascus and Beirut remains uninterrupted and the most common way of travel for Iraqi nationals. Royal Jordanian and Syrian Airways fly regular services into Baghdad. Gulf Airways also operate regularly into Dubai. Those travelling from northern Iraq would usually travel across Syria as the fastest and most convenient route down to Amman. It was easier for Iraqi nationals

holding UK travel documents to enter Syria than Jordan. It was believed that other airlines were considering opening routes into Baghdad and Basra in the future.

25. In a further letter dated 16 June 2005 from the British Embassy in Amman it is reported that applications for entry clearance are not a lengthy process. The embassy offers a same day service for all applications and usually aims to make a decision on the day. Iraqi nationals routinely travel by road directly from Baghdad to Amman. There are service taxis running regular routes from Amman, Damascus, Baghdad and Beirut. People travelling from northern Iraq often go by Syria. There are regular flights between Baghdad, Amman and Damascus and there are understood to be air services between Basra and the UAE. The embassy does not routinely ask which route has been used by Iraqi nationals as that would be obvious from the border stamps in their passports. The embassy is not able to give a time period for how long Iraqi nationals have been in Jordan before submitting applications as it depended upon the people's individual circumstances. For those coming expressly to make an application it was usually within two or three days of their arrival. Iraqis could make applications without necessarily returning to Iraq given the turnaround for straightforward applications. It was a matter for the Jordanian authorities how they implemented their border control and immigration polices but usually a foreign national would be given entry for a two-week period in the first instance. If staying longer an extension was normally given to enable a stay of up to three months. At the end of this period they could apply for a further three-month period after which they must leave or obtain a residence permit. In practice, this was simply a matter of crossing over the border to Syria, then returning to enable the whole process to begin again.

26. The Tribunal was also referred to evidence at R3 that Iraqi Airways intended to launch a service three times a week between Amman and the northern Iraqi Kurdish city of Erbil via Baghdad. There are also plans to start a regular flight between Amman and Basra.

27. We have also been referred to the travel advice issued by the Department of State at A7-8. The Department of State strongly warned US citizens against travel to Iraq which remained very dangerous. It refers to credible information that terrorists are targeting civil aviation. All vehicular travel in Iraq is described as extremely dangerous. It is reported that there have been numerous attacks on civilian vehicles as well as military convoys. The Foreign and Commonwealth travel advice current as at 3 December 2005 advises against all travel to Baghdad and the adjacent provinces of Basra and Maysan. The security situation is described as dangerous and in the light of recent events in Basra, it is said there is likely to be increased tension and a risk of further attacks against British and other foreign nationals. The report from the Refugee Council confirms that the UNHCR has until recently not promoted voluntary return to Iraq. In its advisory note on Iraqi

returns on 27 September 2005, it noted that the security situation had generally deteriorated between January and August 2005. It maintained its advice that there should be no forcible returns to southern or central Iraq. Highway 10, the major road running from the Jordanian border, is described a notoriously dangerous road.

28. We were also referred to the country guidance determination of *SM* where the Tribunal after a full review of the evidence came to the conclusion that the authorities in the KAA were capable of providing protection as a matter of law under the Refugee Convention and that they were in fact able to provide a sufficiency of protection against Islamic extremists and terrorists.

Consideration of the issues as they relate to the appellant

29. The first issue to consider is whether the appellant has established that removal would be an interference with his right to respect for his private and family life. He has established that he has family life in this country. We are not satisfied on the basis of the evidence before us that the appellant's marriage was opportunistic. The letters on the file from the appellant's wife appear to be genuine and heartfelt. They refer to the fact that the appellant and his wife have a happy marriage and the appellant's wife describes herself as deeply grief-stricken at the thought of the appellant having to return to Iraq. Removal would clearly be an interference in the sense that there would be an inevitable interruption in the appellant and his wife being able to live together. However, the interference must have consequences of such gravity as potentially to engage the operation of Article 8. As Sedley LJ commented in paragraph 42 of *ZT*, the relative ease with which one could usually establish a failure of respect for a person's private or family life made the demonstration of proportionality under Article 8(2) commensurately easier. He said that in the ordinary case there is no particularly high threshold for entry into Article 8. He expressed some concern about the relationship between Lord Bingham's second stage, referring to the interference having consequences of such gravity as to potentially engage the operation of Article 8 and his fifth stage, proportionality. We are satisfied that there may be some interruptions of family life which would be of such limited duration that they could not reasonably be described as an interference. If an application for entry clearance could be made within a matter of weeks, it may be that there would be no interference or lack of respect with an appellant's right to family life but if the application is prolonged or fraught with other dangers, there would be an interference.

30. We are satisfied, and it is not in dispute, that any interference would be in accordance with the law as the appellant is an illegal entrant and has no other right to remain in this country. It would be in pursuit of a legitimate public aim, the prevention of disorder or crime. The Secretary of State is entitled to maintain and enforce the Immigration Rules.

31. We now turn to the issue of proportionality. Removal was regarded as disproportionate in *KJ* on the basis that the evidence showed that it was unsafe to travel either by road or air to Jordan from Iraq. The Tribunal summarised its conclusions as follows:

> '17. Mr Hussain argued that the travel dangers referred to by the UNHCR in graphic terms; the appellant's inability to pay to fly; the fact that he is a non-Arab speaking Kurd; that, as a Kurd, he would need to return to Baghdad, then get himself somewhere where he could safely stay until such time as he was able to arrange to travel to Amman; all combine to establish that it would be disproportionate to expect the appellant to return to Iraq in order to apply for entry clearance as a spouse.
> 18. We are persuaded that Mr Hussain is correct. It is primarily the letter from the UNHCR which has persuaded us of that. The evidence shows that those who fly between Baghdad and Amman are diplomats and businessmen. It is also clear that many of those get to the airport by helicopter from a secure area. The dangers of the road are much more explicit in this correspondence than previously.
> 19. Mrs Giltrow did not seek to argue that there is any alternative mission to which it would be less hazardous to apply for entry clearance.
> 20. In our view it cannot be argued that it could be proportionate, in the circumstances which have been set out above, to require the appellant to return to Iraq to apply for entry clearance.'

32. The evidence before us shows a different picture. There is no doubt as to the general dangers in Iraq as set out in the warnings from the Foreign and Commonwealth Office and the US State Department against travelling. The security situation including the fact that insurgents are targeting the international forces there as well as Iraqi interests associated with the Iraqi Transitional Government is well documented. However, the evidence is clear from the British Embassy in Amman that many applications are being made by Iraqi nationals. According to the letter dated 20 March 2005 road travel between Baghdad and Amman, Damascus and Beirut remains uninterrupted. The UNHCR letter of January 2005 dealt specifically with the road from Amman to Baghdad. The fact that this road continues to be dangerous is confirmed by the Foreign and Commonwealth Office advice which at A11 said that attacks frequently occurred on the main supply routes into Iraq, particularly the Baghdad-Amman Highway. However, according to the letter of 16 June 2005, Iraqi nationals routinely travel by road directly from Baghdad to Amman. There are service taxis and the cost is around $25 for a seat. If someone wants more space they can pay for extra seats. Although there are clearly dangers, we are not satisfied in the light of this evidence that the dangers are so extensive that it is unreasonable to expect the appellant to make the same journey being made regularly by others seeking entry clearance.

33. We are also satisfied that this is not the only route by which the appellant can reach Amman. The letter of 20 March 2005 refers to the fact that those travelling from northern Iraq would usually travel across into Syria as the fastest and most convenient route. It is also easier for Iraqi nationals holding UK travel documents to enter Syria than Jordan. There are now more air flights than when the UNHCR letter was written. We accept that there are regular flights between Baghdad,

Amman and Damascus. There are also air services between Basra and the UAE. There are proposals for flights between Amman and the northern Iraqi city of Erbil via Baghdad. The fact that applications can be made in Amman is evidenced by the numbers. Between April and October 2004 there were 3,300 applications from Iraqi nationals and from October 2004 until March 2005 3,399.

34. The appellant is from Kirkuk. He has continued to assert that he would not be safe in the KAA because of what has happened in the past but his assertions in that respect were considered and comprehensively rejected by the adjudicator who heard his asylum appeal. There is no further evidence which would justify that issue being reopened. It has not been argued that returning the appellant to Iraq in the light of those findings would amount to a breach of Article 3 and we are not satisfied that the general risk of violence because of the current situation in Iraq can lead to a finding that the appellant would be at risk of a breach of Article 3 by requiring him to return and travel to Jordan to make an application for entry clearance.

35. We remind ourselves that proportionality is a high test and that the appellant must show that his circumstances are truly exceptional. There is no particular feature about his circumstances which distinguish him from any other Iraqi citizen who is required to make an entry clearance application before entering the United Kingdom. Even if the requirement to make an application from abroad can properly be categorised as an interference with his family life, we are not satisfied that his circumstances can be described as truly exceptional such as to make removal disproportionate. As Sedley LJ said in *ZT*,

> '... The underlying message of *N* and *Razgar*, and of *Ullah* too, is that the ECHR is neither a surrogate system of asylum nor a fallback for those who have otherwise no right to remain here. It is for particular cases which transcend their class in respects which the Convention recognises.'

36. For the reasons we have given, we are not satisfied that the appellant's case falls within this category.

Decision

37. For the reasons identified, we are satisfied that the original Tribunal made a material error of law but having reviewed the evidence for ourselves, we nevertheless dismiss the appeal.

H.J.E. Latter
Senior Immigration Judge

APPENDIX

Background materials placed before the Tribunal

- Iraq Country Report April 2005
- Letter from FCO 10 March 2004
- Letter from British Embassy Amman 20 March 2005
- Letter from British Embassy Amman 16 June 2005
- Iraq Development Programme re Amman-Erbil flights
- FCO UK Embassies Overseas, Kuwait, Syria, UAE, Turkey.
- FCO Travel Advice 26 July 2005
- British Embassy Baghdad Travel Advice 26 July 2005
- British Embassy Amman Travel Advice 25 July 2005
- Travel Warning US Dept. of State 6 December 2005
- FCO Travel Advice 3 December 2005
- Refugee Council Briefing November 2005
- Radio Free Europe/ Radio Liberty Report 30 November 2005
- British Embassy Baghdad Visa Services Information 3 December 2005

Approved for electronic transmission