

**Neutral Citation Number: [2008] EWCA Civ 995**  
**IN THE SUPREME COURT OF JUDICATURE**  
**COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE ASYLUM & IMMIGRATION TRIBUNAL**  
**[AIT No: AA/04748/2005]**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: Thursday, 24<sup>th</sup> July 2008

**Before:**

**LORD JUSTICE MUMMERY**  
**LADY JUSTICE ARDEN**  
**and**  
**LORD JUSTICE KEENE**

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**Between:**

**MO (IRAQ)**

**Appellant**

**- and -**

**THE SECRETARY OF STATE  
FOR THE HOME DEPARTMENT**

**Respondent**

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(DAR Transcript of  
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THE APPELLANT APPEARED IN PERSON.

**Mr J Hall** (instructed by the Treasury Solicitor) appeared on behalf of the **Respondent**.

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**Judgment**  
(As Approved by the Court)

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## **Lord Justice Keene:**

1. This is an appeal from a decision of the Asylum and Immigration Tribunal (“the AIT”) dated 3 September 2007. That was a decision made on a reconsideration by Immigration Judge Sommerville. It is in fact conceded by the Secretary of State that that decision cannot stand but what remains in issue is whether the original determination in this case, made by Immigration Judge Lowe in August 2005, should ever have been the subject of reconsideration in the first place. That of course turns on whether the AIT was correct subsequently in identifying errors of law in that original determination.
2. The basic facts of the case can be put quite shortly. The appellant is an Iraqi national of Kurdish ethnicity, who arrived in the United Kingdom in January 2003. He claimed asylum on the basis that he had been falsely accused in Iraq of raping the daughter of a neighbour, a senior member of the Ba’ath party, and had in August 2001 been sentenced to 15 years’ imprisonment. He said that his father had paid a large bribe, which enabled him to escape from a hospital to which he had been taken. He claimed that he had been badly beaten while detained in Iraq, with his nose being broken and boiling water being poured over him. In essence, his case was that if returned there was a real risk that he would be at least returned to prison where he would suffer significant harm.
3. Immigration Judge Lowe dismissed his appeal in respect of his asylum claim but allowed it on human rights grounds, finding that there was a real risk of treatment in breach of Articles 2 and 3 were the appellant to be returned. She reached that conclusion because she found the appellant to be a credible witness. Reconsideration was subsequently ordered by Senior Immigration Judge Nichols on two grounds: first, that Immigration Judge Lowe had not given adequate and proper reasons for her finding that the appellant was credible in his evidence and secondly, that she had failed to give adequate reasons for finding that the appellant would be pursued by the Iraqi authorities if now returned.
4. Those grounds, if justified, would indeed amount to errors of law. If, however, there were no errors of law as identified in Immigration Judge Lowe’s decision, then, instead of the matter being remitted for a fresh determination, the conclusions of the judge, Immigration Judge Lowe, would stand. That is the significance of the present hearing.
5. The appellant is no longer legally represented and indeed does not appear today. His solicitors have been taken off the record very recently. The appellant, I am satisfied, was aware of the floating period for today’s hearing, his solicitors being still on the record at the time of such notification. The case has been called outside but no response has taken place. We, however, have had the benefit of a substantial skeleton argument drafted by counsel on the appellant’s behalf, some eight pages of which concern this issue, and of further material submitted by counsel on the appellant’s behalf. In that

material a challenge is mounted to both the alleged errors of law. This court has taken account of all those representations made on behalf of the appellant.

6. On the first aspect concerning the appellant's credibility, Immigration Judge Lowe was said to have erred in particular when dealing with the appellant's evidence about the sentence imposed on him. She referred at paragraph 14 of her determination to the evidence about execution as a penalty for rape and then at paragraph 15 went on to deal with the objective evidence on the penalties applicable for rape, noting that the basic sentence was life imprisonment. She then set out the sentences applicable for other sexual offences, some of which understandably had lower sentences than rape, and then she went on to say this after that summary of the objective material:

“16. The appellant's sentence therefore fits within the scale of punishments so far as can be assessed from the limited objective evidence from the time.”

7. The Immigration Judge then discussed various possibilities which might have led to a sentence lower than life imprisonment. I have to say that it seems to me that the Senior Immigration Judge was right to criticise this reasoning and to categorise it as an error of law. It is literally irrational, in that the sentence of 15 years' imprisonment does not accord with the judge's summary of the objective evidence about sentences for rape. That was the offence for which, on the appellant's own account, he was convicted and for which he was being sentenced, not some lesser sexual offence which might have drawn a lesser sentence of imprisonment than that of life. The main skeleton argument on behalf of the appellant scarcely addresses this deficiency in the reasoning of Immigration Judge Lowe. In my judgment this was an error of law and that by itself was enough to justify an order for reconsideration in this case.
8. I can therefore take the other aspect rather more briefly. The second error concerned the treatment of the evidence about what would happen to someone in the appellant's position, as alleged, who had been convicted and sentenced under the regime of Saddam Hussein and who was now returned to Iraq. The Senior Immigration Judge found that Immigration Judge Lowe had failed to carry out a proper assessment of the evidence on this issue and in particular how the appellant's allegation that this had been a corrupt charge brought to force money out of the appellant's family would now be dealt with.
9. That ground seems to me to have had rather less justification. The Immigration Judge (that is, Immigration Judge Lowe) did consider the then current state of the judicial and prison system in Iraq at paragraphs 19 and 20 of her determination. She did not expressly address the issue of how sentences passed before the change of regime would now be treated but she identified a risk to the appellant, and it could be said that given the state of the evidence that was not an error of law. She dealt at some length with the situation in Iraq at the time of her decision and the problems which exist in that country. She of course only had to identify a risk rather than a certainty as to what would happen to the appellant, were he returned. Mr Hall, for the Secretary of State,

has sought to persuade us this morning that Immigration Judge Lowe erred in not dealing with conditions in prisons in Iraq if the appellant were returned to prison in that country. That, however, was not one of the errors of law identified by the Senior Immigration Judge and for my part I cannot see how that error can now be advanced to try to bolster up the order for reconsideration which was made.

10. But that, in the event, does not matter. As I have already said, there was an error of law properly identified. Reconsideration was therefore justified and so Immigration Judge Lowe's decision cannot stand. I therefore would only allow this appeal to the extent conceded by the Secretary of State, namely that the reconsideration decision of Immigration Judge Sommerville be quashed and that this matter be remitted to the AIT for a fresh consideration of the appeal.

**Lady Justice Arden:**

11. I agree.

**Lord Justice Mummery:**

12. I agree.

**Order:** Appeal allowed