

IMMIGRATION APPEAL TRIBUNAL

YJ (Non - Kurdish speakers in KAA) Iraq CG [2002] UKIAT 05271

Date heard: 13/09/2002
Date notified: 15/11/2002

Before:
Mr M W Rapinet (Chairman)
Mrs E Hurst JP

Appellant

The Secretary of State for the Home Department
Respondents

Determination and Reasons

Representation:

For the appellant: Mr L. Jackson, counsel, instructed by Noden & Co.

For the respondent : Mr I. Graham, Home Office Presenting Officer

1. The appellant is a citizen of Iraq who appeals by leave of the Tribunal against the determination of an Adjudicator (Miss S.I. Bayne) dismissing his appeal against the respondent's decision to refuse to grant asylum or leave to enter.
2. The background to this case is that the appellant arrived in this country in July 2000 without any travel documents and immediately claimed asylum. He has a brother in this country who has been granted indefinite leave to remain. The family, who are Kurdish in origin, appear to have lived in Kuwait. The appellant's brother and another sibling called Waleed were captured by the Iraqi authorities in Kuwait and returned to Iraq. The brother Waleed was killed by the Iraqi authorities. The appellant himself followed his two brothers to try and find them and relocate with them. He claims that he was conscripted into the Iraqi army, from which he subsequently deserted after serving for about ten years. He claims he was maltreated in the army.
3. The Adjudicator has rejected the appellant's claim that he is a deserter from the Iraqi army and therefore that he is at risk on return by reason of this fact. However he does state at paragraph 63

'It remains the case that the respondent proposes to return the appellant to Iraq as a failed asylum seeker and the objective evidence shows that he would inevitably face risk of detention and consequently ill-treatment for this reason alone were he to be returned to any part of Iraq under the control of the government of Saddam Hussein.'

It is not in dispute that the appellant left the country illegally.

4. The Adjudicator then goes on to find that it would nevertheless be safe for the appellant to return to the Kurdish Autonomous Area (KAA) but it would not be unduly harsh for him to do so.

5. Mr Jackson put before us a very helpful skeleton argument in which he urges us to follow a Tribunal determination in the case of Maghdeed [2002] UKIAT 03631 and the judgment of the Court of Appeal in the case of Gardi dealing with the question of whether or not the KAA was a separate legal entity. In his submissions before us he concentrated entirely upon the Robinson test as to whether or not it would be unduly harsh for the appellant to be returned to the KAA. He drew our attention to the report of the Norwegian Refugee Council dated June this year and passages in that report, to which we will refer later, which in his submission would make it unduly harsh, applying the principles in Robinson, for this appellant to seek internal flight in the KAA. He submitted that the Adjudicator had failed to deal with this matter adequately and the arguments which he, Mr Jackson, who represented the appellant before the Adjudicator had made. He points out that there is a language problem. Although the appellant is of Kurdish origin, he does not in fact speak Kurdish, the main language being Arabic, and this would make it difficult for the appellant to obtain employment in the KAA and would invite hostility from the various tribal groupings in the KAA. He submitted that living conditions are extremely poor and that the appellant had no relatives in the KAA area and therefore no host family to assist him. He referred to the problems of internal displacement in the KAA area to which reference is made in the Norwegian report.

6. Mr Graham in his submissions accepted that the conditions in the KAA were harsh but maintained that the appellant would be suffering no more than those who are already living in the area. He submitted that the language difficulties would not be a problem as the appellant would be living among Kurds and is of Kurdish origin. He had come to this country because he was aware of the fact that there were Kurds here. He submitted that the Norwegian report indicates that food, education and health are reported to be at an acceptable level.

7. Mr Jackson in his final submissions points out that the only family the appellant has in this country, is that of his brother who had given evidence at his hearing and, although he accepts that food, education and health are acceptable, the general conditions in the country are 'abominable'.

8. We do not think that the matters raised in the case of Magheed are necessarily relevant to Mr Jackson's arguments. Magheed was allowed very largely on matters raised by the Court of Appeal in Gardi, namely whether the KAA has a state-like entity which is capable of providing adequate protection. In this case the question of adequacy of protection does not arise as the appellant is in fact not seeking protection from persecution at the hands of the government of Iraq, in that the Adjudicator has not found that he was persecuted in Iraq and that he is not a deserter. The essence of what the Adjudicator has found is that the appellant fled the country because of conditions there and because he has a sibling in this country, that he would be persecuted upon return because he had fled the country illegally but that it would be safe for him to return to the KAA as he would not be persecuted there for having left Iraq illegally. He was therefore not in need of protection by reason of the fact that he

left the country illegally as he had the availability of internal flight because he fears he would be persecuted on return as a person who left the country illegally. The question, as Mr Jackson rightly points out, is whether or not internal flight to the KAA would be unduly harsh, applying the principles in Robinson. The report of the Norwegian Refugee Council is of great assistance in supporting Mr Jackson's submissions. It refers to considerable internal displacement from Iraq to the KAA area and the strain that this has placed upon the infrastructure and services of that area. At page 7 it refers to a United Nations Report:

'40% of internally displaced persons in the region under Kurdish administration live in settlements with standards of water and electricity supplies, sanitation, drainage and road access that were below average for the area. Access to food, education and health care were however acceptable. Due to the increasing number of internally displaced in the north, several international observers reported in December 2000 that newcomers were becoming less welcome by local authorities.'

9. The head of UN programmes in Iraq also expressed his concern about the lack of housing alternatives. Another element adding to the difficulty to resettle the internally displaced in Northern Iraq is that the region is heavily mined and clearing these minefields would reportedly take between five and seven years. The report also refers to Turkish incursions into the area and the internal disputes between the various political factions in the region.

10. In greater detail the report at page 43 deals with the question of accommodation and underlines the deteriorating conditions in the aftermath of the Gulf crisis. It states, at page 44:

'The situation of IDP is of great concern in Northern Iraq. Most of them including widows and children live under precarious conditions in public buildings and provisional shelter, just a few miles south, Sulaymaniyya, in makeshift tents, with open pits for waste disposal, displaced Kurdish families or fractions of family survive on UN rations.'

11. Dealing with the question of landmines at page 54, the report refers to 'The population of the three northern governments of Iraq faces extensive landmine unexploded ordnance (UXO) problems in the world.' The same section indicates that the United Nations estimate that there are more than ten million land mines buried in the region. Dealing with the question of family unit, page 49 indicates that whilst persons displaced were originally made welcome the numbers increased were seen as an increasing threat to the local population both from the point of view of culture and from the point of view of employment and use of infrastructure etc.

12. It is apparent from the determination, and it has not been challenged by Mr Graham, that there was some problem in connection with interpretation at the hearing in that the appellant does not appear to speak pure Kurdish, Arabic being his principal tongue. We remind ourselves that he was born in Kuwait and brought up there until he went to Iraq as a young adult.

13. Mr Graham argues that he is of Kurdish ethnic origin and speaks a certain amount of Kurdish and would be amongst Kurds in the KAA. We do accept Mr Jackson's

submission that .. the manner in which he speaks Kurdish or his lack of comprehensive Kurdish, would draw him to the attention of the local population with which he would be attempting to settle were he to return to the KAA. By reason of the factors in the Norwegian report to which we have referred above, the fact that he is not a person from the KAA region, would immediately become apparent and he would encounter the understandable antagonism based on tribal and cultural and now material problems from the indigenous population. We accept Mr Jackson's argument that this would make it more difficult for him to find either employment or housing and other shelter.

14. Mr Graham has submitted that he would be in no worse conditions than the indigenous population of the KAA, in particular in relation to education, health and food. But we do not think that this is necessarily the case. For the language reasons which we have indicated earlier, we think that he would be discriminated against at any point should he be in competition with the indigenous population for any of the services that he may require. As Mr Jackson has rightly pointed out, there is no supporting family for this appellant in the region and he would be entirely on his own. The determination makes it clear that representations were made to the Adjudicator with regard to the appellant's psychological condition, and although he has rejected those representations and although we have no medical report upon the appellant in the bundle before us, we do take into account the evidence of the brother given before the Adjudicator with regard to the appellant being in need of medication and apparently suffering some form of psychological problem. We emphasise that this aspect is not determinative in our conclusions but contributes to our consideration of the question of whether it would be unduly harsh to return him to the KAA.

15. Were he to be returned to that region, it is clear to us that:

- (a) he would be at disadvantage by reason of his lack of command of the Kurdish language, that such disadvantage would be reflected in particular in employment and access to other facilities,
- (b) that he would in all probability end up in a refugee camp where the conditions are, as Mr Jackson rightly points out 'abominable' which is underlined by the Norwegian report from which we have quoted above
- (c) that he has no supportive family, that he would be on his own and that possibly he has some medical or psychological problems which in the absence of supportive family would be emphasised.

16. We therefore find Mr Jackson's submissions and the supporting evidence which he has placed before us to be persuasive and we conclude that it would be unduly harsh in the circumstances of this appellant for him to be returned to the KAA. The appeal is accordingly allowed.

M W RAPINET

VICE PRESIDENT

© Crown Copyright