

IMMIGRATION APPEAL TRIBUNAL

Dates of Hearing: 13 & 14 July & 4 August 2004

Date Signed: 9 September 2004

Date Determination Notified: 22 September 2004

Before:

Mr J Barnes (Vice-President)
Mr A R Mackey (Vice-President)
Mr S L Batiste (Vice-President)

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

Respondent

DETERMINATION AND REASONS

For the Appellant: Mr T Weisselberg.

For the Respondent: Mr P Jorro, instructed by Messrs Elder Rahimi.

1. The Respondent is a citizen of Iraq. The Appellant appeals, with permission, against the determination of an Adjudicator, Mr T O'Flynn, allowing the Respondent's appeal against the decision of the Appellant on 22 August 2003 to refuse leave to enter and refuse asylum.
2. This appeal was listed before the Tribunal with two other cases in order to provide the opportunity for the Tribunal to assess comprehensive evidence and submissions, and give country guidance on a variety of issues relating to Iraq of general relevance. The three appeals were heard together but separate determinations have been prepared in respect of each. The lead case of the three is **GH (Former KAZ – Country Conditions and Effect) Iraq CG [UKIAT] 0000248** in which the Tribunal's general conclusions on many of the issues raised are set out in detail. We adopt GH, with which this determination must be read, and deal here with the specific issues relating to this Respondent and with the matters arising therefrom that have not been addressed in GH.

The Respondent's Claim

3. The Respondent's claim can be summarised as follows. He is a Kurd who was born in Gouwer in Northern Iraq near to Mosul. He left school in 1987. From 1991 he undertook three years of military service. Thereafter he opened his own bakery. His family had a history of political activity against the Iraqi regime. His brother, [redacted], was an activist in the banned Iraqi Workers Communist Party (IWCP). Its aims were to establish a socialist state and it campaigned against Islamic fundamentalists and was in conflict with the main groups in control of the Kurdish held areas.
4. The Respondent himself became active in IWCP in 1999. He belonged to a three man cell, the other two members being Yousef and Sabah. The Respondent distributed leaflets and put up posters for the organisation. On 17 December 2002 he was at his bakery when he heard that Yousef had been detained. He sent a message to Sabah but received no reply. He went into hiding at his uncle's house in Mosul. On 19 December he heard that his own home had been raided by the authorities. He feared that his membership of the IWCP cell had been identified. His uncle helped him to find an agent to get him out of Iraq. He left the country on a lorry on 22 December 2002 and arrived in the UK on 7 January 2003, making a claim for asylum on the same day.

The Adjudicator's Determination

5. There has never been any challenge to the credibility of the Respondent's claim. The Adjudicator therefore concluded in paragraph 6.2 of the determination
"I find that [redacted] is an Iraqi Kurd; that he was a member of an IWCP cell; that his home was raided; and that he feared persecution from the former Iraqi regime."
6. However by the time the appeal came for hearing before the Adjudicator on 11 November 2003, the Saddam regime in Iraq had fallen. The Adjudicator assessed the objective evidence before him in the following terms.
7.2 In August 2003 the UNHCR noted that the prevailing conditions in Iraq are characterised by an absence of law and order in many parts of the country. UNHCR is not yet promoting voluntary returns. They advise states to be mindful of the possibility of persecution emanating from non-state agents, particularly given the absence of effective national protection in Iraq. Similarly, atrocious forms of past persecution should favourably be taken into account in the determination process.
7.3 Since August 2003, the security situation in Iraq has not improved. Commentators have suggested that, in spite of the appearance of the Interim Advisory Council, in reality there is a political and security vacuum in Iraq. There are daily reports of attacks on coalition forces. ICRC has, very unusually in such situations, closed its Baghdad and Basra offices after a car bomb at their headquarters killed 12 people. In

August 2003, 22 people were killed in a car bomb attack on the UN headquarters in Baghdad. As a result, in September 2003, the UN cut the number of its international staff in Iraq, leaving fewer than 50 foreign employees in the country. There is much evidence to show that the coalition forces are not able to secure that they are effectively protected, let alone a position to offer protection to Iraqi civilians. The attacks are not confined to the coalition forces: radical Islamist groups have threatened people whom they perceived as presenting an obstacle to their policies. It is estimated that thousands of Iraqis have been killed since the end of the war.

7.4 The CIPU report (August 2003) suggests that persons within the former Kurdish autonomous zone (KAZ) who have a localised problem can safely and reasonably relocate within the former KAZ to the Kurdish dominated areas outside of the former KAZ or elsewhere. The KDP and the PUK are in de facto control of the KAZ and are considered capable of offering protection to those who reside in their respective territories and there is a system in place to provide such protection. In September 2003 a car bomb exploded in the Iraqi Kurd region, killing 1 and injuring 47

7.5 With regard to the IWCP, its relationship with the official Kurdish parties has been strained over the years. It is not being allowed to operate in the Kurdish controlled area of Iraq. The organisation's activities have been banned by the KDP. It is the only party which had no office, no radio station and was not allowed to publish a newspaper (although the organisation published papers which were distributed in secret). The secret police of the KDP keep the IWCP under constant surveillance and have arrested their activists. In the past, the regional government of Kurdistan (which represented both the KDP and the PUK) have backed the Islamists against the IWCP.

7. Given this assessment of the objective evidence, the Adjudicator then went on to state his conclusions, which can be summarised as follows.
 1. The Respondent, when he came to the UK to seek international protection had a well founded fear of persecution from the Saddam regime. The Adjudicator had to consider whether in the light of the current circumstances and the overthrow of the Saddam regime that fear is still well founded
 2. IWCP represents a political philosophy that is outside the mainstream policies of the activist groups in Iraq. Historically, it has been disliked by the radical Islamists, who are presently seeking to entrench and spread their support. From the objective material it is clear that anyone who is openly flouting radical Islamic principles (such as the selling alcohol) is being threatened by the Islamists. The IWCP was equally seen by the Baath regime as presenting a real threat to their power base in Iraq and the incidents of persecution under the Saddam regime are well recorded.
 3. The Respondent remains an activist within IWCP and cannot be expected to relinquish his ideals. If he were to go to Baghdad and

continue his activities, there is a real danger that Islamists and other groups opposed to IWCP would pose a real threat to him.

4. The coalition forces are not in a position to protect themselves or the international organisations, let alone Iraqi individuals who fear persecution.

5. The Respondent could not go to the KAZ because the KDP and the PUK have been traditionally strongly opposed to the IWCP. They would offer some reasonable protection to their own within their region but that would not include members of IWCP.

8. The Adjudicator then, prior to allowing the appeal both in respect of asylum and Article 3, summed up his conclusions in these terms.

8.8 Taking into account all of the above, I am sure that this [Respondent's] fears of persecution as a member of the IWCP may well be realised if he is returned. He is a member of the IWCP whose home has been raided. He is known therefore as an activist. He remains an activist. As such, he is vulnerable wherever he goes in Iraq. He cannot call upon the coalition forces for protection. He cannot go to the KAZ or any other Kurdish dominated area and seek protection for reasons I have outlined above. For these reasons I do not consider that "internal relocation" is a viable option for [].

The Grounds of Appeal

9. The concise grounds of appeal state as follows.

1. It is respectfully submitted that the Adjudicator has erred in his determination in failing to cite the source of the objective evidence that a member of the Iraqi Workers Communist Party would be liable to persecution at the present time in Baghdad (paragraph 8.4 of the determination) or in the Kurdish Autonomous Zone (paragraph 8.6). Since we do not have the sources, we cannot consider any such objective evidence

2. It is again submitted (as was stated by the Respondent at the hearing, paragraph 8.3 of the determination refers) that the coalition forces are taking steps to control the actions of activists in the Baghdad area, which, it is submitted, would minimise any possible risk to an IWCP member from Islamic extremists.

Therefore the determination cannot stand.

10. Permission to appeal was granted so that "the parties can identify the objective material referred to in the grounds of appeal and relied on by the Adjudicator. Thereafter it can be reviewed by the Tribunal together with the determination".

Submissions

11. Mr Weisselberg accepted he had to show there was an error of law in the determination and specifically that the Adjudicator's findings were perverse. He relied upon the written submissions made concerning the general situation in

Iraq, and also referred us to a number of specific passages in the objective evidence relating to the IWCP. He argued that the Adjudicator erred in his approach to the change of circumstances in Iraq following the fall of the Saddam regime. He had conflated the evidence about different periods of time and different parts of the country. He failed to identify from whom the Respondent would now be at risk in his home area of Gouwer and Mosul, which was outside the area now administered by the PUK/KDP. The risk from the Saddam regime was now passed. The Adjudicator's conclusions failed to reflect the absence of any objective evidence to show that a low level member of IWCP would be of adverse interest to anyone in the current circumstances in Iraq. He failed to have regard to the fact that IWCP had opened offices in various cities in Iraq and their meetings were no longer clandestine. The only reported difficulty was a reported attack on one IWCP office in the south of Iraq in Diwaniyah, which was described in only one report and nowhere else. IWCP in its press releases did not suggest that it or its members were now being targeted. The Adjudicator failed to identify the sources in the objective evidence upon which he relied for his contrary conclusions. The reality was that the Respondent could return safely to his home area or anywhere else in Iraq and the Adjudicator's conclusions to the contrary did not reflect the evidence and were perverse.

12. In response, Mr Jorro relied upon the submissions made by Ms Naik and Mr Adler as to the general conditions in Iraq and referred us to passages in the objective evidence concerning the risk to the Respondent. He said that the fact that the Respondent was a Kurd from Mosul and a member of the IWCP created risk factors that justified the Adjudicator's conclusions. The Tribunal could not interfere with the Adjudicator's conclusions unless there was an error of law in them, which effectively meant unless they were perverse - and they were not. The Adjudicator's conclusions were sound on the objective evidence before him at the time of the determination and were still sound in the light of the up-to-date objective evidence. There was no real difference in the risk to him on the evidence before the Adjudicator or the current evidence. The criticism of the Adjudicator that he did not cite his sources was a procedural matter, not an issue of law. The Tribunal could remit the matter to the same Adjudicator in order that he could describe his sources in the objective evidence or, alternatively and preferably, it could look at the objective evidence itself, which clearly offered a sufficient basis of fact to justify the Adjudicator's conclusions that the Respondent would be at real risk as a member of IWCP from the pro-Western Kurdish parties in the north and from increasingly Islamic fundamentalist Shiites in the south and in Baghdad.
13. In reaching our conclusions on these submissions we have borne in mind, as we were reminded by both Mr Weisselberg and Mr Jorro, that the Court of Appeal has in a number of recent decisions emphasised that our new jurisdiction is limited to correcting errors of law. Also we have accepted that the submissions made to us in the course of the hearing have properly been wide ranging, as is appropriate given the nature of the combined hearing of the three appeals, the

adoption by Mr Jorro of Ms Naik's submissions in GH and Mr Weisselberg's responses to them, and the need to provide general country guidance.

Assessment of Adjudicator's Determination

14. As we have said, we adopt GH as it relates to relevant aspects of this Respondent's appeal and this determination must be read in the light of what we said in GH. We have gone on to assess whether the Adjudicator made an error of law in the conclusions he reached in relation to this specific appeal.
15. In so doing, we have followed the Court of Appeal judgement in **Subesh & Others [2004] EWCA Civ 56**, which summarised the relevant jurisprudence and gave guidance to the Tribunal concerning the proper approach to be taken to challenges against an Adjudicator's findings. In paragraph 43, Laws LJ stated it as follows.

“In every case the Appellant assumes the burden of showing that the judgment appealed from is wrong. The burden so assumed is not the burden of proof normally carried by a claimant in first instance proceedings where there are factual disputes. An Appellant, if he is to succeed, must persuade the appeal court or tribunal not merely that a different view of the facts from that taken below is reasonable and possible, but that there are objective grounds upon which the court ought to conclude that a different view is the right one. The divide between these positions is not caught by the supposed difference between a perceived error and a disagreement. In either case the appeal court disagrees with the court below, and indeed may express itself in such terms. The true distinction is between the case where the court of appeal might prefer a different view (perhaps on marginal grounds) and one where it concludes that the process of reasoning and the application of the relevant law, require it to adopt a different view. The burden which an Appellant assumes is to show that the case falls within this latter category.”
16. In applying this test and responding to the submissions made, we have had to analyse both the Adjudicator's approach to and assessment of the objective evidence for ourselves.
17. Both representatives accepted that the Adjudicator failed properly to identify the objective evidence on which he relied in his conclusions. We do not consider this as a mere matter of procedure as Mr Jorro suggested, but rather a matter of some potential significance. We need to be able to identify the evidence upon which the Adjudicator relied for his summary of the situation in Iraq, and whether the weight he attached to specific elements was reasonably open to him.
18. However we agree with both representatives that we can cure this error by adopting the approach recommended by them in inviting us to look at the objective evidence as a whole for ourselves and to conclude whether in the light

of that the Adjudicator's conclusions revealed errors of law. We note in this context that they both also agreed that there is no material difference on the issue of real risk between the up-to-date evidence presented to us and the post Saddam evidence presented to the Adjudicator.

19. As we have said, Mr Jorro argued that there were three specific risk factors relating to the Respondent that in aggregate justify the Adjudicator's conclusions. They are that he is a Kurd, from Mosul, and is a member of the IWCP. These factors inter-act with each other. We begin our assessment of them with the material relating to IWCP, which was not considered specifically in GH where the facts were different.

Risk as a Member of IWCP

20. Both Representatives referred us to passages in the CIPU reports of 2002 and 2004. The report of April 2002 describes IWCP in these terms:

Iraqi Workers' Communist Party (IWCP/WCPI)

The IWCP is represented in KDP territory although, strictly speaking, an illegal party there, not being officially registered and authorised to engage in political activities. The IWCP increasingly includes extreme left-wing Iranians. The party's supposedly anti-nationalist and anti-religious leanings cause friction with the KDP and have of late also been giving rise to trouble with the PUK.

The IWCP is nevertheless officially represented in PUK territory, having its head office and radio station in Sulleymania. The party publishes the newspaper "Bopeshawa". Relations between the IWCP and the PUK could until a short while ago be described as reasonably good. The PUK used to assist the IWCP by means of monthly donations. Recently however some tension has arisen, partly as a result of an accusation of illegal fundraising levelled at the IWCP by the PUK and an investigation into IWCP involvement in the deaths of two former IWCP members. There are also rumours abroad of an IWCP rapprochement with Baghdad. Fierce animosity is felt between the IWCP and the Islamic Movement in Kurdistan (IMIK). The IWCP arouses irritation, not only on the part of IMIK, by its extreme political views, which often run directly counter to Kurdish traditions. At the funeral of the IWCP's founder, Farad Farradj, for instance, the Internationale blared forth. IMIK was suspected of involvement in the murder of two IWCP members in Sulleymania in October 1999. IWCP earlier accused "Islamic groups in the city of Arbil" of the murder of two IWCP members on 18 April 1998. To the best of our knowledge however there have been no really large-scale incidents between IMIK and IWCP.

21. This of course reflected the period prior to overthrow of the Saddam regime in Iraq in March April 2003. The most recent CIPU report of April 2004 describes the organisation in these terms.

Workers' Communist Party of Iraq (WCPI or Iraqi Workers' Communist Party (IWCP)

The Workers Communist Party of Iran website reported on 25 April 2003 that the WCP of Iraq had established two offices in the Bab-al-Sharjy and Keradeh districts in Baghdad, in Kirkuk and in several other Iraqi cities. A meeting with cadres and members was held in Nasiriyah and mass meetings held in Baghdad, Mosul, Tuz and Kirkuk. Several thousand copies of the weekly newspaper were distributed.

On 26 June 2003 the Independent Media Centre Ireland carries what appears to be a news release by IWCP itself. It announced that:

Following ten years of clandestine activity, the WCPI has begun overt activities in Baghdad and in central and southern cities of Iraq.

WCPI launched a wide movement to set up mass organisations, trade unions and workers councils, supporting women in Iraq to establish their organisations

WCPI's radio and offices in Kirkuk are the only part of the city's politics to which people could turn, in order to stop the bloody ethnic cleansing and national conflicts.

IWCP was formed in 1993 from four small communist groups. The IWCP accused the PUK of attacking the organisation's office in Sulleymania in 2000. The PUK also reportedly prevented the IWCP from holding its second conference in December 2002, according to a report by the BBC on 13 January 2003.

22. The pattern, which therefore emerges from these brief CIPU summaries, is that towards the end of the Saddam era, IWCP enjoyed in the main relatively good relations with the PUK, including financial support, though with occasional tension and trouble. The summaries also show that IWCP is represented in the KDP territory, although it is not a legal party there. It is fiercely opposed to IMIK and vice versa, although there were no large-scale confrontations between them. In the post Saddam era, IWCP has ceased to be a clandestine organisation. It has opened offices in a number of cities and is seeking to organise nationally. It holds what it describes as mass meetings, though Mr Jorro suggests that, in communist jargon, a mass meeting is a meeting of representatives of the masses, and does not necessarily imply a meeting of any great size.
23. We have then looked at the remaining objective evidence for further insights into the current position in Iraq of IWCP.
24. We begin by noting that IWCP is not a part of the Interim Iraqi Government unlike the other more moderate and rather larger Communist Party, ICP, which is.

25. Mr Joffe cited a report of an attack on an office of the IWCP in the south of Iraq in Diwanayah, but this is not reflected in any other reports and we conclude therefore that either the report cited is unreliable or the attack was of minor significance. Mr Joffe was unable under cross-examination to identify any other attacks on IWCP members.
26. The press release from IWCP (of Iran), referred to above, describes the current activities of IWCP (of Iraq) but does not suggest that it or its members are subject to any targeted attacks in any part of Iraq. Indeed given the wide range of material placed before us and the fact that IWCP is no longer a clandestine organisation in Iraq, we would conclude that if there were any such attacks, there would be clear evidence of them in the papers before us notwithstanding that IWCP is a relatively small party, as Mr Jorro observed.
27. Mr Jorro responded to this lack of evidence of present difficulties by arguing that IWCP is traditionally disliked by all the other main players in the new Iraq and that it would be reasonable to conclude that a member of IWCP would as a consequence be at real risk on return.
28. He referred to other paragraphs of the CIPU reports of April and October 2002, which show that there had during the Saddam era been a shifting pattern of alliances and hostility between various groups in the Kurdish areas such as the KDP, PUK, ITF, PKK, IWCP and IMIK. For example in July 2000, the PUK had ordered all opposition groups to move their offices out of the Sulleymania city centre following a number of bombings. IWCP refused to move office and, in an attack by the PUK security forces on it, six or more IWCP members were killed and others arrested.
29. Mr Jorro then referred us to an Al Jazeera report of 6 April 2004 and a report from the Daily Star of 27 April 2004, also relied upon by Mr Weisselberg in his attack on Mr Joffe's opinion that the situation in the KAZ was unstable. The headline from Al Jazeera is that "Kurdistan comes straight out of a US government press release" and offers the opinion that "if Kurdistan were Iraq writ large, then you might just believe the US had won the battle for Iraqi hearts and minds". The report from the Daily Star is along the same lines. Mr Jorro submitted that this shows a pro-Western attitude by the Kurdish authorities and asked us to imply that this meant hostility to a Communist Party such as IWCP. In support of this submission, he referred back to the press release of IWCP (of Iran), to which we have already referred, which also included the statement that "Over the years, the WCPI has fought for the overthrow of the Baathist regime and has been unequivocally opposed to the economic sanctions and the war against Iraq. Following the fall of the Baathist regime, the WCPI has announced that the USA-imposed government has no legitimacy as far as the people of Iraq's interests are concerned. The WCPI has strongly condemned a US envoy, General Garner's attempts to impose such a government as well as the efforts of Islamic groups to determine the future government of Iraq into a religious one".

30. Mr Jorro also referred us to reports of a bomb attack on 22 January 2004 on a newly established Baghdad office of the Iraqi Communist Party. He suggested that as this was a more moderate Communist Party than the IWCP, one could presume that IWCP would also be at risk from the conservative Shiites who were suspected for the attack and who according to the evidence were becoming more powerful in their areas of Iraq. However the perpetrator of the bomb attack is not known, and an obvious alternative view is that as the ICP is a member of the Interim Iraqi Government, it could be a target of the terrorists who are seeking to destabilise the democratic process in Iraqi by attacks on emanations of the state.
31. The problem with this approach by Mr Jorro is that if he were correct and IWCP were in reality to be so disliked by other parties that its members at any level were at real risk in the post Saddam era, there should be by now some clear evidence of it that goes beyond the jockeying for position by all the political parties within the new democratic process. There is not. There is considerable violence being undertaken by those opposed to the democratic process, which is, as shown in GH, targeted at the coalition forces, Westerners, emanations of the Iraqi state, and very recently at Christian churches. There is however no evidence of violence targeted at members of IWCP. We are in reality being asked to make assumptions about what might happen in the future, but that would be speculation and is not the proper function of the Adjudicator or of the Tribunal. Our task is to assess present risk.
32. We therefore conclude that the Adjudicator's conclusion that "I am sure that this Appellant's fears of persecution as a member of the IWCP may well be realised if he is returned" is speculative and is unsupported by the objective evidence as to the current situation. Consequently his approach reflects an error of law.
33. The Adjudicator's error of law in his approach as described above is further compounded by other material errors. In setting out the factual background relating to the Respondent personally, against which the Adjudicator undertook his assessment of risk, he began with the assertion in paragraph 8.8 that
"He is a member of the IWCP whose home has been raided. He is known, therefore, as an activist. He remains an activist. As such, he is vulnerable wherever he goes in Iraq.
34. It is true that the Respondent showed commitment to IWCP by distributing leaflets and putting up posters for them during the period of the Saddam regime, when the risk was great. However his activities were always clandestine and as such would not have attracted general attention. The raid on his home followed the capture of a member of his cell and presumably the disclosure of the Respondent's name under torture. Of course the consequences of this to the Respondent could have been very serious had he been caught, given the extreme violence and brutality of the Saddam regime. They may not have distinguished between suspicion and proof. However the Respondent was able to escape and has not therefore ever faced actual past persecution or public exposure of his work for IWCP. It is entirely speculative as to what record was kept about the

Respondent by the Saddam regime, and whether any such records survived the fall of the Saddam regime, when so much of the paperwork and records maintained by the secret police were very publicly destroyed. There is therefore no evidential basis to suggest that the suspicion of local Baathist officials in his home area concerning low level activities for IWCP undertaken by the Respondent in the past, would now be available to the authorities or anyone else even in his home area, let alone Baghdad, or that, as suggested by the Adjudicator, they would be a source of present risk to him anywhere in Iraq. Certainly, if the Respondent openly resumed his activities on behalf of IWCP on return to Iraq, he may then become known in the area in which he carries out those activities. However he has never been a high profile member and for the reasons described above he will not, as a low level member of the IWCP, be at any real risk as such.

35. Thus, for the reasons we have described, we conclude that the Adjudicator's conclusions in respect to the risk to the Respondent arising from membership and activity on behalf of IWCP as such, are flawed by errors of law in his approach.

Risk as a Kurd in Mosul

36. We have then gone on to assess the picture as a whole including the remaining two risk factors identified by Mr Jorro, which relate to the Respondent's Kurdish ethnicity and his coming from Mosul. In part this was covered in general terms in GH but there were also some more specific submissions in this appeal that we must address.
37. It is well-established law that in relation to both asylum and associated Article 3 claims, an Adjudicator must first decide whether a claimant is at any real risk in his home area, and, if he is, whether there is a sufficiency of protection available to him there. It is however plain when reading the determination that the Adjudicator has conflated the objective evidence relating to all the different areas of Iraq and the various and different causes of violence in those areas, without properly assessing the real risk to the Respondent in the Gouwer/Mosul area, where he lived. This represents a further error of law in his approach.
38. Mr Jorro submitted, and this was not disputed, that the KDP and the PUK have become much stronger since the collapse of the Saddam regime and are seeking to spread their at power to the south of their original power bases in the KAZ, to areas where there is a significant Kurdish population. Mr Joffe said in his report of 6 October 2003 that the local administration then was ostensibly in the hands of local people, as an election was carried out in late May 2003 by the local American commander, using a hand-picked selection of electors to produce an ethnically balanced town council. On top of such tensions that still persist, Mr Joffe said that local Kurdish groups from the nearby KDP controlled area of Kurdistan also claim the city as their own and seek to reintroduce a Kurdish majority population there.

39. Mr Jorro also referred us to paragraph 6.4 of the current CIPU report which states
- “A UK/Danish fact-finding mission report to Damascus, Amman and Geneva reported in August 2003 that in Mosul and Kirkuk the situation was good immediately after the war but had since deteriorated, with increasing tension between Kurds and Arabs over de-arabisation, although these problems had not been as severe as anticipated. Nonetheless, the situation remained much better than in Baghdad and the Sunni triangle. However on 27 April 2004 the Lebanese newspaper the Daily Star reported that "in recent weeks many Kurds have been killed in Mosul, where Kurds from Irbil and Dohuk now avoid travelling.”
40. In assessing this evidence we note that according to the objective evidence Mosul has not been absorbed into the KAZ, nor is it under the direct control of the PUK or the KDP. It is now under the control of the wider Iraqi administration. There is no evidence of generalised violence there or of politically directed violence. Until mid 2003 Mosul was generally quiet. Since then there have been some instances of violence in the context of the tensions arising from de-Arabisation as described in the UK Danish report. On 27 April 2004 the Lebanese Daily Star in an article headed “Not all is bad in Iraq: Look at the Kurdish areas” reported that “in recent weeks many Kurds have been killed in Mosul, where Kurds from Irbil and Dohuk now avoid travelling”. They do not specify how many deaths have occurred, and to put this in context Mr Joffe said that some hundreds of thousands of Kurds have returned and many sought repossession of their old property. Also as we described in GH there is now a proper legal structure in place for resolving disputes, which is helping to calm inevitable tensions and the few and limited explosions of violence in some localities are not reflective of wider violence. We note that such violence as there has been relates essentially to the property issue and there is no objective evidence to show that any violence has been directed at IWCP members.
41. We consider that the Adjudicator further erred in law in failing to identify from whom the Respondent would be at risk in Mosul following the fall of the Saddam regime. First, as we have said, the objective evidence does not reveal targeted attacks on members of IWCP. Second, there is no evidence that the Respondent himself is seeking to recover any specific property under the de-Arabisation process and, even if he were, any risk to him from general violence relating to de-Arabisation is in context limited and would not constitute a real risk of persecution or of a breach of Article 3. Third, even if one accepted Mr Jorro’s submission that the KDP and the PUK dislike IWCP, the objective evidence does not reveal in the post Saddam era any targeting by them of IWCP members even in the KAZ. In any event, they are not in control of Mosul. Fourth, Mosul is not a centre of Shiite religious extremism, which Mr Jorro identified as a source of risk to IWCP members. It is predominantly a Sunni area. Fifth, as we said in GH, IMIK the Kurdish religious extremist organisation was largely broken by the attack on their enclave by the PUK in 2003 and even if it is seeking to re-group under another guise, such as as Ansar-al-Islam, and is

receiving aid from foreign terrorists, it is under pressure everywhere and is focused on attacking the coalition forces. There is therefore, on this analysis, no one in Mosul from whom the Respondent specifically would be at any real risk.

Decision

42. For all the reasons given above we conclude that the Adjudicator's conclusions are flawed by errors of law and must be set aside. They reveal an incorrect approach to the assessment of the evidence, that is speculative and does not reflect the reality of the objective evidence.
43. We can cure this error by reaching our own conclusions and have so done. We conclude, on the basis of the objective evidence and the reasons we have described here and in GH, that the Respondent would be at no real risk of persecution or a breach of his rights under Article 3 as a Kurdish member of IWCP, were he to return to his home area in the Mosul district.
44. Accordingly, this appeal is allowed.

Spencer Batiste
Vice-President

Approved for electronic transmission