

LSH  
Heard at: Field House

JA (Ethnic Palestinian- Iraq-  
Objective Evidence) Iraq CG  
[2005] UKIAT 00045

On 7 January 2005

**IMMIGRATION APPEAL TRIBUNAL**

Date Determination notified:

27 January 2005

Given orally in court

**Before:**

**Mr J Barnes (Vice President)**  
**Mr C H Bennett**  
**Miss R I Emblin**

**Between**

**APPELLANT**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**RESPONDENT**

**Representation:**

For the appellant: Mr A Deve, a Legal Representative of the  
Refugee Legal Centre (London)  
For the respondent: Miss R Brown, a Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is an ethnic Palestinian, born on 20 December 1978 who was formally habitually resident in Iraq. He claims to have arrived clandestinely in the United Kingdom on 25 October 2001. He was at all events here on 29 October 2001 when he applied for asylum. Following an initial screening interview and the provision of a self evidence form, but a failure to attend at interview, the Secretary of State refused that application for the reasons which are set out in a letter dated 11 July 2003, which

deals substantively with the appellant's claim on the basis of the information before the Secretary of State.

2. On 24 November 2003, the Secretary of State gave notice of his intention to issue directions for the removal of the appellant to Iraq as an illegal entrant after refusal of his asylum application. He appealed against that decision on both asylum and human rights grounds and on 22 March 2004 his appeal was heard by an Adjudicator, Miss R Eban.
3. The basis of the appellant's claim had originally been that as a Palestinian refugee in Iraq he feared the adverse attention of the former Saddam Hussein regime because he had come particularly to the notice of certain members of that regime by reason of the interest of Uday Hussein in his sister. By the time of the hearing that basis of his claim of course no longer applied because the Saddam Hussein regime had been overthrown. His claim was based solely on a fear that as an ethnic Palestinian he would be either persecuted or that his protected human rights under Article 3 of the European Convention would be breached if he were now returned by reason of the general hostility of the Iraqis to ethnic Palestinians in Iraq.
4. The Adjudicator considered his appeal on this basis and she deals at paragraphs 10 and 11 of the determination with the objective situation shown by the background material as follows.

"10. I have considered the letters from UNCHR in the bundle and that produced at the hearing but regrettably there is very little up to date background evidence before me. I have read the expert's report of Ibrahim Al-Marashi. I accept that third country nationals in Iraq are viewed with suspicion by many Iraqis due to their perceived affiliation with the former regime. In particular Palestinian refugees have been targeted in the aftermath of the war. I accept that Palestinian families have been evicted, mainly by landlords, who were compelled by Saddam Hussein to let Palestinians houses at artificially low rents, and who are now unhappy with the lease terms imposed by the former regime and who are demanding huge rent increases or that the Palestinians leave the properties. I accept that evictions have in some instances been violent, and that they continue. I accept that third country nationals such as Palestinians are being forced out of their homes and jobs by Iraqis who consider them to be supporters of the former regime because they received favourable treatment under Saddam Hussein.

11. It is apparent from the article produced to me at page 66 of the appellant's bundle that some Palestinians have

been forced to live in refugee camps, where conditions are poor.”

5. Having correctly disposed of the proposition that statelessness of itself gives rise to a well-founded fear of persecution, the Adjudicator then points out that her decision must be whether there is a real possibility that a danger exists for this appellant with regard to his claimed fear of persecution or breach of his protected human rights. Having dismissed any such claim based on the fear of those formerly in power, she then deals with the current situation at paragraphs 17 and 18 as follows:

“17. As to whether the appellant would face persecution in post-Saddam Hussein Iraq from non-state agents, taking account of the background situation as I have accepted it to be, and having considered the views of UNCHR, I find that the present conditions in Iraq, although they may be uncomfortable, pose no real risk of treatment amounting to persecution to this appellant. Accordingly I find that there is no current real risk of persecution by the state or by citizens opposed to the Saddam Hussein regime.

18. The appellant has submitted that his rights under Article 3 of the Human Rights Convention are engaged and in order to succeed in his claim under Article 3, the appellant must show that there is a real risk that return will expose him to inhuman or degrading treatment. In assessing this it is appropriate to take into account all the circumstances, including any particular impact that there may be on the appellant himself. Such treatment as the appellant is reasonably likely to face needs to cross a high threshold. For the reasons set out above I find that the appellant would be of no interest to the authorities were he returned. It appears from the background evidence before me that there is no real risk of inhuman or degrading treatment under the Human Rights Convention because of the present circumstances, even were the appellant to be removed from his home and forced to live in a refugee camp.”

6. The Adjudicator therefore dismissed his appeal.
7. The appellant sought permission to appeal against that decision and it is appropriate to set out ground 1 in full. It is as follows:

“1. It is submitted that the Adjudicator’s finding that there is no risk to the appellant from citizens opposed to the Saddam Hussein regime is perverse and materially flawed and unsustainable for the following reasons:

1.1 The Adjudicator fails to consider the issue against the background evidence and the expert opinion, which she accepts in paragraph 10, as clearly showing that Palestinians were being targeted since the end of the war in Iraq.

1.1.1 In paragraph 10 of her determination, the Adjudicator states unequivocally her acceptance of the background evidence detailing the targeting of Palestinians, particularly because of the perception that Palestinians were supporters of the Saddam Hussein regime. All this background evidence supports the appellant's claim to be at risk if returned to Iraq, and it is submitted that if the Adjudicator had considered the claim against this evidence, she ought to have concluded that the appellant would be at risk in Iraq.

1.1.2 It is further submitted that there is no foundation in the Adjudicator's assertion that there was no up-to-date evidence before her as she had the UNCHR position paper and the expert opinion both dated 18 March 2004 (and the hearing was on 22 March 2004), other reports were dated from September 2003 to February and March 2004.

1.2 The Adjudicator's finding is unreasoned and this gives the appellant no indication as to the basis upon which the Adjudicator reaches this finding. The lack of reasons is particularly important if one considers the Adjudicator's acceptance of the appellant's account as well as the objective evidence, but then proceeds to make a finding that is not supported by the accepted evidence."

Ground 2 simply then seeks to rely on the same points in relation to the human rights claim under Article 3.

8. Before us Mr Deve relied upon those grounds of appeal but this is an appeal to which Section 101 of the Nationality Immigration and Asylum Act 2002 applies and an appeal will lie to the Tribunal only on a point of law. Applying the ratio in **CA v SSHD [2004] EWCA Civ 1165**, it is essential to identify a material error of law on her part before the Tribunal is entitled to revisit the Adjudicator's determination on a merits basis. Mr Deve contended that there was such a material error of law for the reasons in the grounds of appeal and in this respect he relied specifically on what was said in the UNCHR letter of 18 March 2004, which he said had been obtained specifically in relation to this appeal, and in the expert report referred to previously.

9. There are only two passages in the UNHCR document upon which reliance is placed. The first appears under the heading "The current situation following the regime change" and simply says that UNCHR understands Palestinian refugees in Iraq would generally be perceived to have enjoyed privileged treatment under the Saddam Hussein regime and that this had serious repercussions in the aftermath of the regime change, which was common to all refugee groups but was particularly so in the case of Palestinian refugees.
10. What is meant by that appears to be fleshed out in the following section under the heading "Protection Concerns" which is as follows:

"The most immediate protection concern held by UNCHR and the refugee community relates to the physical protection of refugees. Physical threats to "foreigners" including the refugee population increased dramatically in the aftermath of the regime change. The threats came in the form of leaflets distributed among the local population asking foreigners to leave the country in one year's time. Refugees were also in many instances subjected to physical threats on an ad hoc basis. The perception that the refugee population was closely associated with the previous regime was basically the motive behind these threats. The Iraqi press also voiced criticism against Palestinian refugees in particular.

The ex-Iraqi regime issued provisions relating to Palestinian refugees on an ad hoc basis. With the absence of a national authority willing and capable of providing Palestinian refugees with needed safeguards a gap in the protection of this group might be foreseen. It is against this background that the UNCHR launched a registration exercise in July 2003 aimed at collecting credible information on Palestinian refugees in Iraq a prerequisite for ensuring protection.

In addition to this the refugee population in Iraq is in immediate need of material assistance. Despite the fact that Palestinian refugees are allowed to work the worsening economic situation together with the decreased employment opportunities had impacted sharply on their chance to have sustainable jobs and left many of them in a critical situation.

In conclusion the refugee population in Iraq is in a precarious situation in the aftermath of the regime change

with the absence of a national party willing and capable of providing the needed protection and assistance”.

11. The expert report fleshes out these general observations slightly in the passage under the heading “The Second flight: Out of Homes into Tents”. This is as follows:

“As the recent US led war ended Palestinians in Iraq were left particularly vulnerable given their uncertain status and the fall of a government that provided them housing concessions. More than 1,000 families in Baghdad have been expelled or threatened with expulsion and that number grows daily. Landlords who no longer receive subsidies from the government for renting to Palestinians are forcing them out of their homes. On 20 April 2003 a new Palestinian refugee camp was established not in Palestine or Jordan but in Baghdad. The majority of those expelled now live in the Al-Awda camp. The camp is full of danger an unexploded bomb lies buried in the middle too deep (the military says) to be removed. As residents bake in the midday sun in the tents provided by the United Nations Refugee Agency (UNCHR) they must deal with minimal electricity and inadequate water and sewage. Community leaders have petitioned the occupation coalition provision authority to identify a building that they could rehabilitate to house the growing number of refugees but with no success. ... Dr Al Awawdeh and Dr Mohammad Abed Al Wahid, Director of the Palestinian Office in Iraq, are working tirelessly to find new housing for the displaced.”

12. The only other passage in that report which is relevant (save for that which deals with the potential difficulties of returning as a failed refugee because of immigration regulations and which is a matter with which we are not concerned as going to the practicality of return) appears in the conclusion in the following terms:

“After examining the present situation in Iraq it is my opinion that due the poor security conditions (sic) in post-Saddam Iraq, I cannot guarantee that Mr Abozuhruh can safely return to Iraq without suffering from reprisals by Iraqis for the mere fact that he is Palestinian. I believe that he will be discriminated there on the basis of his race.”

13. It is immediately apparent, however, from those passages on which Mr Deve places reliance first that the expert has not approached the issue of persecution from the correct jurisprudential standpoint because he appears to be seeking guarantees rather than addressing himself for the question of

whether there is a real risk to the appellant. Secondly, that report is based on generalities, most of which date back some considerable time prior to the report. There is nothing anywhere in either of the documents which suggests that Palestinians are as such being targeted in Iraq by Iraqi citizens and indeed the only specific issue raised in the UNCHR document is that the threats to which they refer come in the form of leaflets asking foreigners to leave the country in one year's time, which hardly points to any immediacy of danger at the point when the Adjudicator was considering the evidence before her. It is also clear that, paying due regard to the displacement of those Palestinian refugees who could no longer enjoy subsidised rented accommodation, the UNCHR and, as we understand it from other passages in the objective material before the Adjudicator, the International Committee of the Red Crescent have taken steps to provide refugee camp accommodation in which essential services are provided even though it is undoubtedly correct that they do not provide the most comfortable of living conditions. It seems to us that on the basis of the evidence on which Mr Deve relies the most that can be said is that the position is uncomfortable and to some extent discriminatory which is precisely what the Adjudicator herself concluded at paragraph 17 and 18 of her determination. Insofar as the challenge in the grounds of appeal is that there was up to date evidence before the Adjudicator because of the dates of the two reports to which we have given specific consideration, it seems to us that her comment is wholly justified since they are clearly based on material which is anything but up to date at that stage. The only conclusion that can be reasonably drawn from that is that there is no subsequent adverse material which would show a worsening of the situation of ethnic Palestinians in Iraq. Insofar as there are allegations of violence against Palestinian refugees following the fall of the Saddam Hussein regime, it appears from the evidence before the Adjudicator that these arose primarily in circumstances of eviction from subsidised rented property. That was not, of course, a category into which this appellant fell, so that this basis of discrimination would have no relevance to his case at all.

14. In so far as it is challenged that the Adjudicator's reasoning is not sufficient to substantiate her conclusions we do not agree. Although she expresses the points shortly at paragraph 17 what she is clearly saying is that when looked at in the round the totality of the objective evidence does not show a position where the high threshold necessary to engage either the refugee Convention or from what she says in paragraph 18, the European Convention is reached. Having adequately spelled out what that evidence is at paragraphs 10 and 11 we see no basis for criticism of that approach having looked at the evidence before her and the way in which she deals with it. We

are satisfied there is no material error of law on the part of the Adjudicator in the findings which she had made leading to the dismissal of the appeal before her. In those circumstances, and applying the ratio of CA, there is no basis on which it would be proper for us to consider this appeal further.

15. It follows that it must be and is dismissed.

**J Barnes**  
**Vice President**



