

Heard at Field House
On 5 November 2004

NH (Iraq – Yazidis) Iraq CG [2004] UKIAT 00306
IMMIGRATION APPEAL TRIBUNAL

Date Determination notified: 25/11/2004

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Before:

Mr D K Allen (Vice President)
Mr A R Mackey (Vice President)
Mrs M L Roe

Between

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

DETERMINATION AND REASONS

1. The Appellant is a citizen of Iraq who appeals to the Tribunal with permission against the determination of an Adjudicator, Mrs J N Reid, in which she dismissed his appeal against the Secretary of State's decision of 29 December 2003 issuing directions for his removal from the United Kingdom, asylum having been refused.
2. The hearing before us took place on 5 November 2004. Mr J French, for Halliday Reeves Solicitors, appeared on behalf of the Appellant, and Mr C Avery appeared on behalf of the Secretary of State.
3. Although the wording is not of the clearest, we consider that it can properly be concluded that the Adjudicator accepted the following aspects of the Claimant's claim. Firstly, she accepted

that he is a Yazidi and worked in the family liquor store which was destroyed after the downfall of Saddam Hussein's regime. She did not accept that he left as he was the best known member of his family, given that his father had worked in the liquor store for a number of years previously and he also had an elder brother. She did not accept that he was persecuted in Iraq because of his connection to the liquor store although it might be that the family business was the victim of a criminal attack, nor did she accept that he was at risk of persecution on return on account of having sold alcohol previously. Nor did she accept that there was nowhere he could go in Iraq to practise his faith. She gave consideration to an expert report from Dr K Rashidian and other aspects of the documentary evidence concerning Yazidis and the situation in Iraq generally, and concluded that he was not at risk on return.

4. The Claimant challenged the Adjudicator's determination on the basis that she had not given sufficient weight to his ability to practise his religion and to the question of attacks by religious fundamentalists on those who sell alcohol. He also referred to persecution of the Yazidi by the Kurds. Permission was granted in order for the Tribunal to assess the risk on return to Iraq for a Yazidi such as the Appellant.
5. Mr French reminded us of the Claimant's history and referred us to Dr Rashidian's report and to other aspects of the objective evidence in the bundle. Specifically, he referred us to page 18 concerning attempts by the previous regime to undermine the identity of the minority religions such as the Yazidis, and also in the State Department Report further evidence concerning the Yazidis, who had been defined by the Ba'ath regime as being Arabs. They had been forced to turn on the Kurds and that had clear relevance to risk on return. From the "World and Nation" Report beginning at page 23 of the bundle, there was a point at page 24 that the number of Yazidis appeared to be something between 100,000 and 600,000. Although they had won a seat on the town council in Mosul, it was unclear how many seats there were in total. It seemed that in fact the Yazidis were not represented on the Iraqi Governing Council. It could be seen from the Tharwa Project Document beginning at page 58 that many Yazidis feared that they would be at risk in the new Iraq, and there was reference to an incident which was blamed on water pollution in March 2004 which had led many inhabitants of the villages to believe that they had been deliberately poisoned because of their religion. Their faith was not accorded the same respect by Muslims as was the case for Christians and Jews.
6. There were no specific examples of problems for Yazidis since the downfall of the regime. The Tribunal was, however, invited to infer that, given the relatively small numbers of Yazidis and points

concerning other religious minorities in Iraq to be found in the Country Report, in particular at paragraphs 6.42 to 6.54 and 6.55 was indicative of the kind of risk that the Yazidis might well face. As regards the failure to get a seat on the governing council, it seemed that the Yazidis were being subsumed into the Kurds who claimed to represent them. They faced the problems of a small religious minority whose religion was misunderstood. Mr French was instructed to seek remittal of the appeal.

7. In his submissions Mr Avery argued that there was no error of law in the determination. The available evidence had been considered in some detail and the conclusions come to were not unreasonable. In general there was no evidence that the Yazidis faced persecution and it was speculation as to the claimed risk that they would face, and their position seemed to be better than it had been under the previous regime. The majority lived in the Kurdish controlled area where law and order was generally better than elsewhere in Iraq, and there was little evidence of risk. The poisoning of the well appeared to be a case of contamination.
8. We consider first the question of whether there is indeed an error of law to be found in the Adjudicator's determination. The Adjudicator clearly considered the relevant objective evidence in the light of her findings of fact and there is no indication that she did not give proper consideration to the relevant expert and other objective evidence concerning the Yazidis. For example, at paragraph 20 she noted that there are hundreds of thousands of Yazidis in Iraq, with many living near Mosul, and that the community faces a struggle to maintain and develop its place in Iraq, and is the object of a power struggle between the Arabs and the Kurds. She went on to conclude that there was nothing to indicate that the Appellant is an individual who would be at risk on return to Iraq by reason of his religion or that he would be unable to practise his religion.
9. In our view, the Adjudicator's conclusions are sustainable and we have come to the conclusion that there is no error of law in this determination.
10. However, in case we are wrong and in any event for the sake of completeness, we consider that it is proper in this case for us to give some consideration to the situation of the Yazidis in Iraq. There is a specific section on the Yazidis at paragraphs 6.59 to 6.64 of the Iraq Country Report of October 2004. They are described as a syncretistic religious group or a set of several groups, many of whom consider themselves to be ethnically Kurdish, although some would define themselves as both religiously and ethnically distinct from Muslim Kurds. The Yazidis predominantly reside in the north of Iraq. There is a reference to an article in The Times of 5 June 2003 referring to the Yazidis' religion being one of the more secretive

and persecuted religions. We have considered the article in the St. Petersburg Times headed "In Iraq, ancient sect quietly lives on faith", which provides some useful information on the Yazidis. They are described as one of the world's oldest and most unusual religions. Estimated numbers of the Yazidis range from less than 100,000 to 600,000. We see from this report that the Yazidis have won a seat on the town council in Mosul though, as Mr French pointed out, it is not known how many seats there are and therefore how representative that in fact is. It is said to be the case that even in the north they are so worried about extremist attacks that they cancelled most of their traditional springtime celebrations this year. They are clearly concerned about Islamic parties and the fact that they have experienced a good deal of religious persecution throughout their history. Though they have been referred to as "devil worshippers", it seems that they have no devil in their religion and it is unclear why they have been so described. It is claimed that as part of his Arabisation programme, Saddam Hussein drove Yazidis and other Kurds from their villages and replaced them with Arabs. Most Yazidis remained in Iraq, where they were forced from their villages into crowded, squalid compounds, denied national identity cards, forbidden to write about their religion and barred from holding government jobs. Many Yazidi men were conscripted into the army and sent to the front line during the Iran-Iraq war. It seems, however, that after 1991 hundreds of Yazidis got jobs in the Kurdistan government.

11. The article at page 31 of the bundle headed "Yazidi Hell's Angels" contains further information on the Yazidis. It is said that after the downfall of Saddam Hussein, Kurdish guerrillas poured into their area from further north and tried to take over the town. It is said that they have been the victims of an ugly ethnic tug-of-war between the Kurds and Saddam Hussein's regime for years. It appears that they have managed to keep their religion and culture alive in the face of oppression. They are said to be at risk in the precarious situation in Iraq and, given their lack of any stake in power, their problems remain. It seems that the Kurds announced that the Yazidis were Kurds and should be represented by them and hence they do not have representation on the governing council.
12. It is the case however, as Mr French accepted, that there is no evidence of specific problems for Yazidis in recent times, but rather a generalised fear, relating in part to the problems that other religious minorities in Iraq, such as the Christians (examples at paragraph 6.54 of the Country Report) and Mandaeans/Sabians (example at paragraph 6.58 of the Country Report) face. It is the case however, as Mr Avery pointed out, the majority of the Yazidis live in the Kurdish controlled areas where law and order is generally better than elsewhere in Iraq. In essence, we have concluded that the inference that Mr French invited us to draw

from the historical problems of the Yazidis and the more recent problems of other minorities is not an inference that can properly be drawn from the evidence. No doubt, as a relatively small minority in Iraq and one which has historically experienced problems from others, the Yazidis are vulnerable, but in our view that does not equate to a real risk of persecution or breach of the human rights of the Appellant before us as of today. The evidence does not in our view show that there is a risk of anything more than the generalised risks that exist at present to almost anyone in Iraq, and that in our view is not such as to give rise to a real risk of persecution or breach of the Appellant's human rights. Accordingly, even if we are wrong in our view that there is no error of law in the Adjudicator's determination, we consider that the evidence does not show a real risk for this Appellant.

13. This appeal is dismissed.

**D K ALLEN
VICE PRESIDENT**