

Heard at Field House
On 14 July 2003
Written 14 July 2003

NS (Risk- Kurd-Mosal) Iraq CG [2003] UKIAT 00045

IMMIGRATION APPEAL TRIBUNAL

Date Determination Notified

28/07/2003

Before

Mr S L Batiste (Chairman)
Mr M G Taylor CBE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. The Appellant, a citizen of Iraq, appeals, with leave, against the determination of an Adjudicator, Mrs J Weinberg, dismissing his appeal against the decision of the Respondent on 13 May 2002 to issue removal directions and refuse asylum
2. Before us, Mr S Onigwe represented the Appellant and Mr G Elks, a Home Office Presenting Officer, represented the Respondent.
3. The Appellant claims to be a Kurdish shopkeeper from Makhmur in Mosul, in the area of Iraq formerly controlled by the Saddam regime and the Baath party. He claimed that he left Iraq because he came under pressure to join the Baath party, did not wish to do so, and feared the consequences. He claimed that he could not relocate to the KAA because his father had been a member of the Baath party and accordingly he would be at risk from anti-Saddam Kurds.
4. The Adjudicator, who heard and decided the appeal before the fall of the Saddam regime and the changes that have followed, reached a comprehensive adverse credibility finding concerning these claims and dismissed the appeal for lack of credibility. She did not however state specifically whether she accepted that the claimant was a Kurdish shopkeeper from Mosul. She did not assess whether he could safely be returned there as a Kurd, because she noted there were no present returns being undertaken to Iraq at all. She did not alternatively consider the issue of internal relocation to the KAA.

5. Permission to appeal against the adverse credibility finding was refused, but permission was granted on the limited basis to enable the Tribunal to consider the omissions by the Adjudicator described above, and their significance. Mr Elks conceded that the Adjudicator was in error in her omissions but argued that, given her sustainable findings of fact concerning the rest of the claim, the Tribunal could now reach its own decision on the risk on return to Mosul on the basis of the current objective material, in accordance with the guidance of the Court of Appeal in *Oleed*. Mr Onigwe submitted that the whole appeal should be remitted to another Adjudicator to hear afresh.
6. The Adjudicator's adverse credibility finding concerning the Appellant's account of pressure to join the Baath party and of his father's involvement with the Baath party are properly sustainable and provide the basis of fact upon which the Tribunal can reach its own conclusions concerning the omissions. The Adjudicator did not make any finding about whether the Appellant was a Kurd from Mosul, but, with Mr Elk's agreement, we are prepared to decide these points in the Appellant's favour and to consider his appeal on that basis. There is no reason therefore why this appeal should be remitted for rehearing by another Adjudicator, as the Tribunal is able to assess the facts as established in context of the current objective evidence for itself. We should make clear that as we are curing a defect in the Adjudicator's determination, we must have regard to the objective evidence as it is today, as held by the Court of Appeal in *Oleed*.
7. The Saddam regime has fallen. The Baath party has fallen with it. Mr Onigwe has shown us reports that some people in Baghdad fear that the Baath party and Saddam might return. However with the continuing and substantial presence of the Allied forces in Iraq and the hostility to Saddam and the Baath party by the majority of people in Iraq, we do not consider on the evidence before us that there is any real risk that these fears will be realised. Accordingly there is no real risk that the claimant will face either persecution or a breach of his Article 3 rights on return to his home area of Mosul. Mr Onigwe pointed us to evidence that former members of the Baath regime were being rounded up by the current administration and that this could put the claimant at risk because of his father's involvement with them. However this aspect of his claim was clearly included in the adverse credibility finding and therefore the claimant would be at no real risk on this account either. Accordingly the need for internal relocation does not arise, though of course the Appellant can now choose to live in other areas of Iraq if he wishes. That however is a matter for him.
8. Mr Onigwe then referred us to some recent objective evidence concerning the overall situation in humanitarian terms in Mosul and argued that return would be in breach of Article 3 on this basis. However the objective evidence shows there have been recent elections that have had a stabilising effect. There is a relaxed atmosphere in the central district of Mosul, with no apparent fears of looting. The city is largely safe with joint patrols with local police. However night time looting still occurs and there is widespread availability of guns, which remains a concern. According to an assessment by UN on 13 May 2003, Mosul was found to be calm and stable with electricity, water and communications working well. The Tribunal considers on the basis of the evidence that any difficulties experienced by the claimant returning to his home area would not remotely be sufficient to reach the high severity threshold required to engage Article 3.

9. For the reasons given above this appeal is dismissed.

Spencer Batiste
Vice-President