

Heard at: Field House

NA (Kurd – internal flight to south)  
Iraq [2004] UKIAT 00249

On: 17 May 2004

**IMMIGRATION APPEAL TRIBUNAL**

Corrected transcript of decision given at hearing

Signed: 18.05.2004

Issued: 27.05.2004

**Before:**

**Mr J Freeman (vice-president)**

**Mrs L R Schmitt**

**Between**

**Secretary of State for the Home Department**

**APPELLANT**

**and**

**CLAIMANT**

Representation:

For the appellant: Mr A Lawther

For the respondent: Miss E Norman, counsel instructed by Richards Heynes & Coopers, Coventry

**DETERMINATION AND REASONS**

This is a Home Office appeal in the case of a Kurdish citizen of Iraq whose appeal was allowed on both asylum and human rights grounds by an adjudicator, Miss L Astle, sitting at Birmingham on 5 August 2003. The claimant's history is that his father had worked for the government at a checkpoint between government-controlled territory and the Kurdish Autonomous Area. His activities led to resentment as a result of which he was eventually murdered by Kurdish forces. The claimant himself had been working at Ba'ath Party offices but following his father's murder he was required to carry out similar activities which he took to be equivalent to spying. He refused to do so and was detained and ill-treated by government forces until he agreed then he was released and fled through Turkey to this country where he arrived in August 2002 and claimed asylum on the basis of risk from the then Ba'ath Party Government.

2. By the time of the hearing before the adjudicator things had of course changed, and the adjudicator gives his current case as follows at paragraph 13:

*When he left he feared the Ba'ath party but now he says that he fears the Iraqi people and the Kurds. He said at the hearing that the fact that he had signed up was now known and he will be at risk as someone who signed up to help the Ba'ath party. He will also be at risk on account of his father's activities. He is the only male member of his family and as such revenge will be taken upon him. In his statement he says that since he left he has spoken to his mother and the Iraqi opposition have raided his house and are looking for family members to kill. Their house has been confiscated and his mother is scared. At the hearing he said that his mother is now moving from one house to another.*

3. The adjudicator dealt with his case as follows:

*27. The account of his ill treatment fits well into the context of the background material and I consider that his claim to have been forcibly recruited and ill treated is reasonably likely to be true. However although I note that some of the papers of the old regime have been found and the appellant claims that his name will be of these, I also note that the appellant left immediately and did not serve the Ba'ath party. In fact they tried to take action against him. He was a shopkeeper right up until he left. In the light of this I do not consider that the appellant is likely to be at risk upon return on account of this.*

*28. However, the appellant's father was prominent in the party and was involved in the arrest and detention of many Kurds and others and I accept that appellant's account of this. Again this has been consistent and when called upon to do so he has been able to give further details. His father only died in 1999. Memories run long in this part of the world. It is likely that there are many people around who will remember him and consider that revenge should be taken. The appellant is the only son. I note that the appellant's mother has lost her house. This also fits in with the background material. I find that if the appellant is returned he is likely to face persecution on account of his father.*

*29. The appellant is an ethnic Kurd and Sunni Muslim. In view of what I have said above I do not consider that he can be safely returned to any Kurdish area. In view of his ethnicity I consider that it would be unduly harsh to return him to an Arab area.*

4. The Home Office challenge that decision on two bases. The first relies on evidence suggesting that family members of former Ba'ath Party officials are not at risk, contained in the report of a British and Danish Fact-finding Mission of July 2003 at paragraph 4.8:

*A Middle Eastern official source informed the delegation that the families of Ba'ath Party officials or people associated with the former regime would not be targeted in revenge for crimes committed during the Saddam regime. The delegation was told that Muslims do not attack family members and that such reprisals would not occur in Iraq. It was added that families were likely to have escaped or changed address any way.*

5. We do not regard that as an impressive piece of evidence: there is no detail about the source which suggests any particular knowledge of Iraq, and the view expressed sounds all too much like what the person concerned thought ought to happen, rather than what actually did happen.
6. Miss Norman suggests that the adjudicator was entitled to find for this appellant on his personal history, on the basis of the events related by his mother. While we think that she might well have subjected that account to more critical evaluation, we accept that she was just about entitled to make the finding of fact she did on this point.
7. The Home Office's second ground is one of a different kind. They say there was no evidence to support the adjudicator's finding at paragraph 29, "*In view of his ethnicity I consider that it would be unduly harsh to return him to an Arab area*". The reference is of course to the southern two-thirds of Iraq, the central part which is a Sunni majority area, and the southern part which is Shi'a.
8. The Tribunal said some time ago in case [2003] UKIAT 00022 A (Iraq) that there was no current evidence to show the general unsafety of the southern two-thirds of the country for Kurds. However, the situation might well have changed since then; so we invited Ms Norman to refer to any other evidence that may now exist about the situation faced by Kurds in Arab areas. There is of course more than enough evidence about the general security of Iraq, or lack of it.
9. The Home Office position is that no returns are currently being made pending further arrangements, which will depend on that general security situation. UNHCR, speaking of course from a different point of view, advise generally against returns of anyone to Iraq. There is an analogy in our view with the situation in Zimbabwe, where there have been no returns for some considerable time, no doubt for good reason. However, the consistent position of the courts and of the Tribunal has been that each individual case must be looked at on its merits; and we see no reason why any different approach should be taken with Iraq.
10. Miss Norman spoke in general terms of the history of animosity between Arabs and Kurds. She referred us to a number of pieces of evidence, contained in the bundle prepared by her solicitors. The photocopying of this bundle is unusually abominable, and numerous parts of the pagination are replicated which has led to further difficulty. We understand that the claimant is receiving legal assistance, and we should like to draw the attention of the Legal Services Commission to what we have said about the bundle, when it comes to claiming any costs of preparing it.
11. The first item we were referred to is an International Crisis Group Report of 19 March 2003. The passage there refers to the attitude to Kurds of the Ba'ath Party, and not that of the general population. Then there is an Associated Press release of 22 April 2003, which refers to events at around Erbil which, as the map contained in the bundle shows, is in the far north of the country. A Washington Post article of 11 April 2003 shows friction in and around Kirkuk, also in the north, as a result of past transfers of Arabs to that area by the former government.

12. All these pieces of evidence refer to northern areas, where there is obvious cause for friction in the struggle, past and present, for power and territory between Arabs and Kurds. There is no evidence at all relating to the situation faced by Kurds in the southern two-thirds of the country, where there is no local population of them for any such struggle to exist; except for a passage noted by one of us in an Amnesty International Report of 18 March 2004. Referring to such improvements as there were in the general law and order situation, Amnesty say:

*Some progress in this direction has been made since the early months of the occupation particularly in the south of Iraq. Iraqis interviewed by AI delegates in February and March 2004 in Basra and Amara, the two Governorates under the control of British troops, said the general situation had improved although lack of security was still a major concern. Members of religious minorities such as Sunni Muslims, Christians and Sabeian/Mandeans felt they were being targeted for attacks and other abuses.*

13. This claimant is, like most Iraqi Kurds, a Sunni. However, there is nothing to show that he would be identifiable as such on the street, or that the problems noted by Amnesty International refer to anyone but Sunni communities local to the Basra and Asmara Governorates, whose members would be no doubt be identifiable as such by their neighbours. In any case, as Mr Lawther has pointed out, the middle third of the country is Sunni. Although the general security situation may be at its worst there, there is nothing whatever to support the adjudicator's finding that this claimant would be at risk there as a Kurd, still less as a Sunni.
14. It follows that there is no evidence on which the adjudicator was entitled to find that it would be unduly harsh to expect this claimant to return to an Arab area, still less that it would be a breach of article 3 of the Human Rights Convention to do so. For those reasons the **Home Office appeal is allowed.**