

Heard at Field House  
On 30 March 2004

HC (Availability of Entry Clearance Facilities) Iraq [2004] UKIAT  
00154

**IMMIGRATION APPEAL TRIBUNAL**

Date Determination notified:

9 June 2004

**Before:**

**Mr Andrew Jordan  
Mr G.F. Denson**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**APPELLANT**

**and**

**RESPONDENT**

Representation

For the appellant/Secretary of State: Mr S. Halliday, Home  
Office Presenting Officer

For the respondent/claimant: Mr S. O’Ryan, counsel

**DETERMINATION AND REASONS**

1. The Secretary of State appeals against the decision of an adjudicator, Ms C.E. Pugh, following a hearing in Bradford on 19 August 2003 dismissing the claimant's appeal under the Refugee Convention but allowing his appeal under the Human Rights Convention.

2. The claimant is a citizen of Iraq and was born on 1 January 1975. He is 28 years old. He entered the United Kingdom on 28 November 2000 avoiding immigration controls but claimed asylum on the same day.
3. On 24 April 2001, the Secretary of State refused his claim for asylum and made removal directions to Iraq. That decision permitted the claimant to appeal under section 69 (5) of the Immigration and Asylum Act 1999, which the claimant duly exercised.
4. The claimant stated that he was put under pressure by the PKK to assist them. He gave conflicting accounts as to whether he became a member or whether the PKK merely attempted to recruit him. The adjudicator referred to the various accounts in paragraph 15 of her determination. The KDP patrolled the village in which the claimant lived and, on 2 August 1999, KDP members attempted to abduct him. In the ensuing struggle, his shoulder was broken. He claimed that he was taken to the security headquarters where he remained in detention for just under a month.
5. On 13 October 2000, members of the PKK attempted to coerce him into cooperating with them which the claimant reluctantly did. A week later, the claimant stated that he was about to be apprehended by the KDP for assisting the PKK but managed to escape.
6. The adjudicator rejected the claimant's account and did not believe that he was wanted by the KDP. If he was, she decided that he could re-locate to another part of the KAA. Although, in paragraph 44 of the determination, the adjudicator did not consider it was necessary for the claimant to return to central Iraq, she concluded that it remained a possibility to do so. For these reasons, she dismissed the asylum claim. In addition, she concluded that there was no likelihood of a violation of his Article 3 rights and decided the claim under this head in line with the asylum claim.
7. The adjudicator allowed the Article 8 claim. The basis for her doing so follows the claimant's marriage to a British national whom the claimant had met whilst in the United Kingdom. Their relationship commenced in February 2002 and they were living together by May 2002. They married in June 2003, as soon as was possible after his wife was able to obtain her divorce. The adjudicator considered the relevant case law and reached a sustainable decision that his wife could not reasonably be expected to accompany him to Iraq. She has children by her former marriage, one of whom aged 16 was

still at college. She had an elderly mother who lived close by. Her mother relied upon her daughter in various ways.

8. The principal reason for finding that the claimant's return to Iraq would amount to a violation of his Article 8 rights centred upon the difficulties in the claimant returning to Iraq and making an application for leave to enter the United Kingdom as a spouse. The adjudicator noted that there was no functioning British Embassy in Iraq and the Presenting Officer told her that all applications by Iraqi nationals are being handled by the British Embassy in Jordan. The adjudicator was informed that this would require the claimant travelling to Jordan. Unfortunately, no information was provided to the adjudicator to assist her in deciding how easy it would be for the claimant to travel from Iraq to Jordan. In paragraph 54 of the determination, the adjudicator decided that it would be a disproportionate response on the part of the Secretary of State to require this husband to leave his wife and not only to return to Iraq but find a means of travel to Jordan in order to apply for entry clearance. The adjudicator had before her the Tribunal's decision in *[2003] UKIAT 00011 J. (Serbia and Montenegro)* that dealt with out-of-country applications made from Kosovo. Although there were no facilities within Kosovo operated by the United Kingdom to manage the grant of visa applications, such applications could be processed in neighbouring places. The absence of such facilities in Kosovo did not, therefore, prohibit the appellant from making an application for leave to enter from outside the jurisdiction.
9. The adjudicator contrasted this situation with that of the claimant. She was satisfied that if an application could be made in Jordan, the British Embassy would process it properly. In the absence of information as to whether the claimant could make the journey to Amman, the adjudicator upheld the claimant's human rights appeal. In so deciding, she considered that the circumstances were exceptional because the question of sending people back to Iraq was only just emerging as a possibility after many years.
10. In *Baljit Singh [2002] UKIAT 00660*, the appellant applied for leave to remain as the fiancé of a British citizen. It was accepted that he and his fiancée shared a family life together with her two children of a previous marriage. His partner was partially immobile as a result of an industrial accident and one of the children was in the middle of GCSE examinations. The Tribunal commented on the adjudicator's concentration upon whether there were insurmountable obstacles in the way of the family following the appellant to India. The Tribunal did not criticise the legitimacy of such an

approach but focussed on the consideration of the viable option of making an out-of-country application for entry clearance as a spouse. Consideration to this option was all the more important given the fiancée's refusal to leave the United Kingdom. Such an option was a more immediate and sufficient reason for concluding that the decision to remove was proportionate as it did not represent any conclusive disruption of the appellant's family life. The appellant was not faced with any permanent or even long-term exclusion from continuing family life in the United Kingdom. The option afforded the appellant a right of appeal against a refusal and both the decision of the Entry Clearance Officer or Immigration Officer and any subsequent appeal had the in-built right to require that any decision was compliant with the appellant's human rights. Thus, the existence of a legal avenue abroad is sufficient to render the removal proportionate and it will only be in *exceptional circumstances* that the decision will not be so. This accords with the decision in the Court of Appeal in *Mahmood* [2001] Imm AR 229 that there should be equality of treatment between those who have entered the United Kingdom and those who apply from abroad or, as Laws LJ said at paragraph 23 of the judgment: "*...it would be manifestly unfair to other would-be entrants who are content to take their place in the entry clearance queue in their country of origin.*"

11. Exceptional circumstances were not said to exist where the effect of separation was likely to require the remaining spouse to become dependant on public funds for subsistence, even in a case where the remaining spouse was partially disabled. (See *Baljit Singh* itself.) Nor where the separation will result in the appellant losing his job (as would normally occur), even where there was no guarantee that the same or a similar job would be available on return. (See *Mahmood*.) The Entry Clearance Officer can be expected to have regard to the appellant's work-record as evidence of the appellant's and his partner's ability to maintain and accommodate themselves without recourse to public funds. It is not an exceptional circumstance that the appellant runs the risk of failing in an application for entry clearance. Indeed, it is plainly arguable that Article 8 should not be used as a means of circumventing the provisions of the Immigration Rules.

12. Exceptional circumstances may be established where the returning appellant is unable to make an effective application for entry clearance from abroad either because there are no facilities for making such an application in his country of nationality or by travelling to a neighbouring country, (*Soloot (01/TH/1366)*) or if there is a prolonged delay

rendering the period of separation disproportionate, (*Mahmood*).

13. The issue before us now is, therefore, whether the absence of a United Kingdom mission in Iraq, capable of considering and granting applications, prevents the claimant making an effective application. If it does, the claimant will have established an exceptional circumstance. See, generally, *[2003] UKIAT 00011 J. (Serbia and Montenegro)*.

14. On 18 September 2003, UK Visas (whose headed notepaper mentions both the Foreign and Commonwealth Office and the Home Office) dealt with entry clearance facilities for Iraqi citizens. This letter post-dates the decision of the adjudicator but is material that we are bound to take into account. Under paragraph 28 of the Immigration Rules, HC 395, applications other than EEA family permits "must be made to the post in the country or territory where the applicant is living which has been designated by the Secretary of State to accept applications for entry clearance for that purpose and from that category of applicant. Where there is no such post the applicant must apply to the appropriate designated post outside the country or territory where he is living." In the case of Iraq, Amman in Jordan has been designated to accept such applications. The letter goes on to state that 15 percent of the caseload of the visa section in Amman is spent dealing with Iraqi applications and "Iraqi applications are made every day of the week." Finally, and not surprisingly, the letter concludes that the United Kingdom has no jurisdiction over the operation of the borders between Jordan and Iraq and cannot, therefore, regulate entry into Jordan.

15. Prior to the information contained in this letter, the material in existence at the time the adjudicator made her decision was contained in a bulletin prepared by the Coalition Provisional Authority dated 10 July 2003 and headed "Passport Update". This stated:

"Currently, Iraq has no capacity to issued passports or other internationally recognised travel document. In order to assist Iraqi nationals to travel, the Coalition Provisional Authority (CPA) has taken several actions.

"On 27 June 2003 CPA Order 16 was signed by Ambassador Bremer which, in part, cancelled the edict of former President Sadaam Hussein that limited the period of validity of the "N" serious passports...

"Additionally, a CPA issued Interim Travel Document that can be used in lieu of a passport is under review, and procedures for issuing such a document are being developed. It is anticipated that an Interim Travel Document will be available by late July or early August [2003], and further information concerning how a person may obtain one will be released as soon as it is available.

"Until then, Iraqi nationals are free to travel, and international travel is possible without a passport. To accomplish this, persons wishing to travel to another country should contact the nearest consular representative of the country they wish to visit to determine what requirements they must meet in order to enter that country. This applies to all persons whether they have a passport or not."

16. The most recent information is contained in a letter from the Foreign and Commonwealth Office dated 10 March 2004 in these terms:

"This letter is confirmed firstly that the [Iraqi] Ministry of Interior Office issuing Interim Travel Documents (ITDs) has temporarily suspended issuing ITDs as the delivery of the new batch of ITD's has been delayed. Issuing of ITDs is expected to resume in 2-3 days.

"Secondly our Embassy in Jordan has confirmed that the border between Jordan and Iraq is not closed. In the past it has been closed periodically for security reasons, but has usually reopened again within 24 hours."

17. The Tribunal is able to deduce the following from this material:

- a. Iraqi citizens are able to travel to Jordan either using a passport issued under the regime of Sadaam Hussein or an Interim Travel Document issued by the Coalition Provisional Authority or the present Iraqi Ministry of Interior Office.
- b. There is no suggestion that the Jordanian government itself requires a visa for entry.
- c. Were the Jordanian government preventing Iraqi nationals entering the country, we would expect this to have been mentioned.
- d. There is no suggestion that any distinction can be drawn between an Iraqi passport holder and an Iraqi national holding an ITD. There would be very little point in the present Iraqi authorities issuing ITDs if they were unable to perform the task for which they were issued, namely, the facilitation of international travel.

- e. From time to time, the border between Jordan and Iraq may be closed for security reasons but this does not prevent travel to Jordan and but may delay it.
- f. The fact that 15 percent of the workload of the British Embassy in Amman is concerned with Iraqi applications indicates that there is a substantial traffic of Iraqi nationals into Jordan for the purpose, at least in part, of applying for entry clearance.

18. The claimant made a statement dated 12 March 2004 in which he stated that he did not think that he could get a passport in the United Kingdom as there is no Iraqi Embassy. He added: " An Iraqi passport is useless, I do not know what I can do with it. It is very hard to apply for a passport in Iraqi as there is no interior ministry." It is apparent from the material that we have set out above that the claimant is incorrect in his statement that an Iraqi passport is useless. Secondly, he is also incorrect when he says that there are difficulties in the way of applying for an ITD in Iraq. We consider that the evidence establishes there is an operating Ministry of the Interior Office.

19. In a statement prepared by Jane Inskip, a trainee solicitor acting on behalf of the claimant, she says that she has spoken to a representative at the Jordanian Embassy in London on 10 February 2004 and that he told her that an Iraqi national who wishes to enter Jordan can do so using only a valid Iraqi passport. It is not clear to us what the official in the Embassy meant by a valid Iraqi passport. If it means either a passport issued by the former regime in Iraq or an ITD, such a restriction would not prevent the claimant from travelling to Jordan. If it means that the Jordanian government does not recognise ITDs issued by the present Iraqi Provisional Authority, we would expect that this to have been mentioned in the material from the Foreign and Commonwealth Office. Indeed, were this to be true, it would undermine the very reason for introducing a system of ITDs.

20. Mr O’Ryan, who appeared on behalf of the claimant, submitted that the journey to Jordan is likely to fail because of a lack of infrastructure by which we take it to mean that no travel is possible between the two countries. He referred us to the Travel Advice of 26 January 2004 issued by the Foreign and Commonwealth Office to the effect that travel by road is dangerous, and there have been attacks against civilians as well as military convoys. There has been an increase in the use of Improvised Explosive Devices (IEDs) on roads throughout Iraq. Terrorists are targeting aircraft operating in Iraq and travel by civil aviation should be avoided. (See the

claimant's supplementary bundle, section B4.) In addition, he referred to an e-mail sent by Mr Twigg from the Foreign and Commonwealth Office dated 10 February 2004 in which he said:

"Whilst we cannot offer specific advice on the dangers of travelling on the Baghdad-Amman highway in particular, the travel advice does warn of an "increase in the use of IEDs on roads throughout Iraq." The advice also notes that "there is a continuing threat from kidnappings car-jackings and robbery."  
"

21. The same problem is also referred to in the Country Assessment prepared by CIPU in October 2002 which states at paragraph 2.18:

"However, there are regular reports of car-jackings and robberies on Iraqi's roads, in particular the highway between Baghdad and the Jordan border. This appears to have little impact on the high levels of traffic and trade along the road. Jordanian taxis, which in the immediate post-war period charged as much as US \$2000 for the journey from Amman to Baghdad, were by mid-July doing the trip for US \$200. "Amman's markets were cleared of goods and second-hand cars for resale in Baghdad by traders taking advantage of the absence of import duties. In early December 2003, at least 400 Jordanian truck drivers stopped carrying goods to Iraq after a series of robberies and kidnappings in which seven trucks went missing, etc"

There are a number of other documents in the claimant's bundle from Reuters and other news agencies to the effect that travel from the Iraqi capital overland may be hazardous.

22. Although Mr O'Ryan conceded that it is possible to obtain an ITD in Iran, he submitted that the evidence fails to establish such a document can be used for the effective purpose of travel to Jordan. For the reasons we have given above, we do not consider that ITDs are ineffective.

23. Whilst we accept the background evidence establishes there may be dangers involved for those travelling from Baghdad to Amman, (especially for western journalists and coalition soldiers), we do not consider it establishes the reasonable likelihood that the claimant cannot make the journey without adverse consequences or a violation of his human rights. Mr O'Ryan accepted that there are large number of persons making the journey. We do not accept,

however, his submission that they were making it by accepting too great a risk.

24. Furthermore, the background material deals with travel by air from Baghdad to Amman. Amongst the documents set out in the supplementary bundle submitted by the Secretary of State is a copy of the British-Danish Fact Finding Report on Iraq of July 2003. On page 16 of the report (page 207 of the bundle), the section on exit and entry of Iraq by airlines contains this information:

"According to international sources in Amman, more than 600 Iraqi citizens legally cross the borderline between Iraq and Jordan daily. According to an Embassy in Amman 2000-3000 individuals passed the border on a daily basis. According to the same sources Iraqis can enter Jordan without a visa and stay in the country for up to six months (initially three months and extendable for a further three months). On leaving Jordan the Jordanian authorities check whether the traveller has overstayed in Jordan. The head of department at the Jordanian Ministry of the Interior informed the delegation that overstayers have to pay a fine of JD 1½ (approx US\$ 2) per overstayed day when leaving the country. For humanitarian reasons the Jordanian authorities more often than not refrain from collecting this fine, however it will be collected if the individual re-enters Jordan. The debtors name will be registered on the computer of the immigration authorities.

"The Jordanian Ministry of the Interior later informed the delegation that Iraqi citizens would be able to enter Jordan from abroad, i.e. from a European country, without being met with a visa request. The airline "Royal Jordanian" despite the embargo has re-established the flight route Amman-Baghdad-Amman operating six trips a week. An Iraqi citizen would be able to travel from a European country to Baghdad transiting Amman airport without being met with a visa request from the Jordanian authorities.

"An Embassy in Amman confirmed that "Royal Jordanian" on an almost daily basis has a flight route Amman-Baghdad-Amman and added that the route was popular among Iraqi and Jordanian businessmen and diplomats from some western countries."

25. Although this suggests the route is most frequently used by diplomats and businessman, we are not prepared to infer that the cost is so prohibitive as to render its use by the claimant impossible. In any event, when considering issues in relation to Article 8 and proportionality, the cost to the

appellant is rarely considered to be a decisive factor by the Tribunal.

26. For these reasons, we consider that there is a viable option available to the claimant to return to Iraq and apply for entry clearance as a spouse. Although this will involve travel to Jordan, we do not consider that the difficulties are such as to render the decision of the Secretary of State disproportionate. At the conclusion of the appeal, we gave our decision to allow the appeal of the Secretary of State. We have now set out our reasons for doing so.

Decision: The appeal of the Secretary of State is allowed.

**Andrew Jordan**  
**Vice President**  
**4 April 2004**