

IN THE IMMIGRATION APPEAL TRIBUNAL

DA (Return to South Unduly Harsh?) Iraq [2003] UKIAT 00022

Heard: 30.06.2003

Signed: 25.07.2013

Sent out: 07/07/03

IMMIGRATION AND ASYLUM ACTS 1971-99

Before:

John Freeman (chairman)

and

Mrs W Jordan

Between:

appellant

and:

Secretary of State for the Home Department,

respondent

DECISION ON APPEAL

Miss G Patel (counsel instructed by Ramsbottom & Co, Blackburn) for the appellant
Mr J Wyatt for the respondent

This is an appeal from a decision of an adjudicator (Mr AJ Blake), sitting at Taylor House on 8 November 2002, dismissing an asylum and human rights appeal by a Kurdish citizen of Iraq. Leave was given on the basis that the adjudicator did not consider properly whether effective protection would be available: that means against breach of the appellant's human rights, because the adjudicator had agreed with the certificate on the asylum appeal. What he had then done, however, was to dismiss the human rights grounds without reviewing their merits. If those have already been fully discussed on the asylum appeal, that may be perfectly all right; but this adjudicator had dismissed that mainly for want of a Convention reason.

2. There was a report before us from a Miss SJ Laizer dated 27 June: though it only arrived on the morning of the hearing, Mr Wyatt was prepared to consider it, in the interests of finality, and so were we. It mainly deals with the risks she says this appellant would face on return to the KAA [Kurdish Autonomous Area]. That was the only destination (however hypothetical) under the previous Home Office policy on returns to Iraq. We drew Miss Patel's attention to the current Home

Office policy on returns to Iraq, set out at § 5.2 of the CIPU bulletin 4/2003 (June 2003):

Enforced removals will be effected as soon as it is practicable to do so. There are several potential routes including to or via Baghdad or Basra, or directly to airports in Mosul or Erbil where humanitarian passenger flights are currently landing.

3. As Miss Patel rightly conceded, there is nothing in Miss Laizer's report (or any other material to which she was able to refer us) to suggest any present real risk for someone like this appellant on return to anywhere outside the KAA. She nonetheless asked us to send the case back for rehearing by an adjudicator. If she had been able to make a case for something in the appellant's individual history leading to a present real risk on return on the background evidence as it stood, then that might have been necessary: however it was for the appellant and those representing him to make his case on any point in his own history relevant to what might face him outside the KAA, and they have not done so.
4. Assuming in this appellant's favour, not only that his individual history is true, but that Miss Laizer is right in saying it still raises a real risk on return to the KAA, he would not be entitled to succeed on the basis that it would be unduly harsh to send him back to the south (what had been government-controlled territory), because there is no asylum appeal before us: see our first paragraph. However, on our reading of the **Robinson [1997] Imm AR 568** test, it must be regarded as substantially equivalent to what is in practice the minimum requirement for success in a human rights appeal of this kind, which is that return should involve "inhuman or degrading treatment"; so nothing substantial turns on that.
5. The reason Miss Patel put forward against return to the south was that the appellant had never lived there before, and had strong family ties in the north: that is also the reason why there is nothing in his individual history which raises any real risk on return to the south. As we pointed out, and she had to accept, he had not lived in this country either before he came here to seek asylum. While Miss Laizer does point (at § 6 of her report) to some evidence of continuing instability and unrest in the south, there is nothing specific to suggest that it would be either inhuman (or unduly harsh, if that were the test) to require this appellant, an apparently fit young man of nearly 26, to return to his country of origin under the protection of the Allied forces which has been so dearly established in money and blood.

Appeal dismissed



John Freeman (chairman)