

**COUNTRY INFORMATION AND POLICY UNIT
ASYLUM AND APPEALS POLICY DIRECTORATE**

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1. Introduction

1.1 This Bulletin provides guidance on the handling of asylum applications from nationals/residents of Iraq. It must be read in conjunction with Iraq Bulletin 3/2003.

1.2 This guidance is intended to provide guidance on whether the main types of claim are or are not likely to justify the grant of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers should refer to the following Asylum Policy Instructions for further details of the policy on these areas:

- API on Assessing the Claim
- API on Humanitarian Protection
- API on Discretionary Leave
- API on the European Convention on Human Rights.

1.3 Claims should be considered on an individual basis, but taking full account of the information set out below.

2. Country assessment

2.1 Decision making and adjudicator appeals on Iraqi asylum applications were suspended on 20 March 2003 at the onset of military action by US led coalition forces. As a result of the military action the regime of Saddam Hussein's Ba'ath Party was removed from power. On 1 May 2003 the President of the United States announced that major military operations were over and the coalition assumed control of Iraq.

2.2 The former regime has completely collapsed and is no longer a threat either to the Iraqi people or the wider world. Ba'ath Party membership was a pre-condition for most official positions in Saddam's Iraq and therefore the membership is estimated to have been as high as 2 million. In many cases, membership would have been a career expedient and not entered into with any great enthusiasm. An estimated 15 – 30,000 high ranking former Ba'ath Party officials will however be excluded from official positions in the new administration and the coalition has declared its intention to bring to justice those who are responsible for atrocities under Saddam.

2.3 The humanitarian disaster that many had predicted would result from the war did not materialise. Conditions are difficult in places but there is no widespread hunger and water supplies have been or are in the course of being restored. Electricity supplies have been restored to most areas, albeit in some cases intermittently. Medical services have been hit by looting and shortage of medicines but are present and improving, the existing Iraqi facilities being augmented by those operated by numerous NGOs.

2.4 Widespread looting and lawlessness followed the collapse of Saddam's regime and the coalition attracted widespread criticism for not taking sufficient action to control the situation. Security has now been made a priority and with many former police officers

reporting for duty and patrolling alongside coalition forces although there are conflicting reports on the extent to which the situation has improved.

Kurdish Autonomous Zone (KAZ) (northern Iraq)

2.5 Even before the removal of Saddam Hussein the government in Baghdad, although recognised as the lawful government of the whole of Iraq, was not in a position to exert any effective authority in KAZ. Self-rule in the area was possible and a high level of independence was maintained.

3. Main categories of claims

3.1 This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by residents of Iraq. It also contains any common claims which may raise issues covered by the API on Discretionary Leave. Where appropriate it provides a steer on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/punishment, whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The policies on persecution, Humanitarian Protection, sufficiency of protection and internal flight are set out in the relevant API's, but how these affect particular categories of claim are set out in the instructions below.

3.2 Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular group or political opinion. The approach set out in Karanakaran should be followed when deciding how much weight to be given to the material provided in support of the claim (see the API on Assessing the Claim).

3.3 If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. In most cases the conditions in Iraq will not be found to be sufficiently harsh for a grant of Humanitarian Protection to be appropriate but where it is it should normally be granted for a period of 6 months. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.

3.4 This guidance is not designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. (For guidance on credibility see paragraph 11 of the API on Assessing the Claim)

3.5 This guidance does not provide definitive information on whether or not a person should be excluded from the Refugee Convention or from Humanitarian Protection. (For definitive guidance see the API on Humanitarian Protection and API on Exclusion under Article 1F or 33(2))

Persecution by Saddam Hussein's regime

3.6 Saddam Hussein's regime was ousted in military action by coalition forces in March and April 2003. Shortly after the end of major military operations the Ba'ath Party was dissolved and there is no evidence of concerted attempts by former members to continue its policies or activities. Between 15,000 and 30,000 former senior Ba'ath Party members have been banned from holding official positions. Other former members will be vetted for criminal conduct. Power is now exercised by coalition administrators and there is no prospect of a return to power of the Ba'ath Party.

Internal flight/relocation

3.14 Persons within KAZ who have a localised problem can safely and reasonably relocate within KAZ, to the Kurdish dominated areas outside of KAZ, or elsewhere.

Conclusion

3.15 Claims from non-Arabs from the Kurdish Autonomous Zone on the basis that they were being persecuted by Saddam Hussein's Government will not be well founded and a grant of asylum or humanitarian protection would not be appropriate. In the event that an applicant is able credibly to establish that they face persecution by one of the Kurdish political parties they can safely and reasonably relocate elsewhere in the country.

IAT Determination: Mohammed (HX13132/2001 promulgated 20 December 2002) concluded that the KDP and PUK are capable of offering protection to those who reside within their respective territories and that there is a system in place to provide such protection.

Arabs living in northern Iraq

3.16 There is evidence that Arabs who took over Kurdish properties in areas just outside the Kurdish Autonomous Zone such as Mosul and Kirkuk as part of Saddam's Arabisation process are being evicted from those properties, sometimes violently. In extreme cases applicants might be able to establish that this treatment amounts to persecution. The KAZ authorities are taking action to resolve these problems peacefully. However, in most cases the claimants are not originally from these areas and can safely and reasonably relocate elsewhere in Iraq.

Honour Killings in the Kurdish Autonomous Zone

3.17 It is accepted that honour killings do occur in the KAZ but not on the claimed scale. The PUK and KDP are willing to offer protection to anyone, male or female, in fear of reprisals. There are Women's groups operating in the KAZ offering help and accommodation to girls fleeing their families. Honour Killings are now considered as murder and prison sentences may be issued by the courts to the perpetrators. They are taken seriously in the KAZ and there is political will to address the problem.

Sufficiency of Protection

3.18 The KDP and PUK are in de facto control of the Kurdish Autonomous Zone. They are capable of offering protection to those who reside within their respective territories and there is a system in place to provide such protection.

Internal Flight/Relocation

3.19 Persons within KAZ who have a localised problem can safely and reasonably relocate within KAZ, to the Kurdish dominated areas outside of KAZ, or elsewhere.

Conclusion

3.20 A claim made on these grounds would not be well founded and a grant of asylum or Humanitarian Protection would not usually be appropriate.

IAT Determination: Mohammed (HX13132/2001 promulgated 20 December 2002) concluded that the KDP and PUK are capable of offering protection to those who reside within their respective territories and that there is a system in place to provide such protection.

Member/Supporter of the PKK/KADEK

3.21 The Kurdistan Workers' Party (PKK), now known as KADEK, is listed as a proscribed organisation in the UK Terrorism Act 2000 (Amendment) Order 2001. Caseworkers should refer claims based on membership to a Senior Caseworker.

Fear of persecution by the Islamists in KAZ

3.7 The former regime's armed forces have disintegrated and although bands of former militias appear to exist they seem concerned solely with common criminal activity or with attacks on coalition forces.

3.8 Each case must be decided on its merits, but it is unlikely that applicants will be able credibly to demonstrate a continuing risk of persecution by agents of the former regime and a grant of asylum will not be appropriate.

3.9 The types of claim to which this section refers include those based on:

- ☐ Opposition to the former regime
- ☐ Military Service/Draft Evasion and Desertion
- ☐ Pressure to join Fedayeen Saddam
- ☐ Forced recruitment into Al Quds/Jerusalem Army/Fedayeen Palestine
- ☐ Non-Arabs who suffered under "Arabisation"
- ☐ Doctors and associated professions who have refused to obey orders of the former regime to punish people by undertaking operations involving branding and amputations
- ☐ Shi'a Clerics who were not appointed by the former regime; and their families
- ☐ Consequences of illegal departure from Iraq

Humanitarian and Security Situation

3.10 Humanitarian conditions in Iraq are improving and despite still being difficult in some areas they are not sufficiently harsh in any part of the country that return would place us in breach of our obligations under Article 3 of ECHR.

Non-Arabs from the Kurdish Autonomous Zone (KAZ)

3.11 The KAZ has two separate regions, which are governed by the Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK). Under the former regime each of the parties enjoyed almost complete freedom of action within its own territory and this continues to be the case under the Coalition administration. Relations between the two parties have improved in recent years, they are working closely with each other and operate a fully functioning joint Parliament.

3.12 In 2002 the overall human rights situation in KAZ had markedly improved in relation to previous years. Both the KDP and PUK administration promulgated laws and adopted decisions aimed at the protection of fundamental civil and political rights, including freedom of expression and association. There is noticeably less conflict between the PUK and KDP now and freedom of movement exists between the two areas. Current relations between the KDP and PUK are good and they are co-operating well with one another. There is no evidence that of any serious deterioration in either the human rights or humanitarian situation since the collapse of Saddam's regime.

Sufficiency of Protection

3.13 The KDP and PUK are in de facto control of the Kurdish Autonomous Zone and are capable of offering protection to those who reside within their respective territories.

3.22 Ansar al-Islam was effectively removed as a threat in military actions by Peshmerga and US Special Forces in March 2003. There is a suggestion that some Ansar fighters may have gone underground and will continue terrorist activity but no evidence for this has so far emerged.

Sufficiency of Protection

3.23 Even if remnants of Ansar al-Islam were to present a continuing threat, the KDP and PUK are in de facto control of the Kurdish Autonomous Zone. They are capable of offering protection to those who reside within their respective territories and there is a system in place to provide such protection.

Internal Flight/Relocation

3.24 Those who claim persecution by Ansar al-Islam have the option of internal relocation within KAZ or elsewhere in Iraq.

Conclusion

3.25 A claim made on these grounds would not be well founded and a grant of asylum or of Humanitarian Protection would not usually be appropriate.

IAT Determination: Mohammed (HX13132/2001 promulgated 20 December 2002) concluded that the KDP and PUK are capable of offering protection to those who reside within their respective territories and that there is a system in place to provide such protection.

IAT Determination: Child (HX/01274/2002 notified 3 October 2002) concluded that IMIK [now Ansar al-Islam] are not the force they were and there is no reason to suppose, from the objective material, that the PUK (the appellants' own party) and in power in the appellants' own area would not protect him.

Former members of the Ba'ath Party

3.26 Please refer all applications involving a claim to have been a member of the Ba'ath Party or to have been a member of Saddam Hussein's regime to a Senior Caseworker.

Former members of Fedayeen Saddam, Al Quds, Jerusalem Army/Fedayeen Palestine

3.27 Please refer all applications involving a claim to have been a member of one of these militias to a Senior Caseworker.

Former members of Iraqi armed forces

3.28 Please refer all applications involving a claim to have been a member of the Iraqi armed forces to a Senior Caseworker.

4. Discretionary Leave

4.1 Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See API on Discretionary Leave)

4.2 With particular reference to Iraq the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances not covered by the categories below which warrant a grant of DL-see the API on Discretionary Leave.

Unaccompanied Minors

4.3 The policy on unaccompanied minors is set out in the API on Children. Unaccompanied minors who have not been granted asylum or HP can only be returned where there are adequate reception arrangements. Unaccompanied minors without a family to return to should be granted Discretionary Leave for three years or until their 18th birthday, whichever is the shorter period.

Medical Treatment in Iraq

4.4 Applicants may claim they cannot return to Iraq due to a lack of specific medical treatment (See API on ECHR and DL and IDI). Medical provision in Iraq was severely hit by years of UN sanctions and further damaged in the aftermath of the collapse of Saddam Hussein's regime. The Coalition administration, NGOs and in particular Shia religious groups are working hard to restore the situation but there are conditions for which it would be very difficult if not impossible to obtain treatment at the present time. Where the lack of treatment on return would make removal contrary to Article 3 a grant of discretionary leave to remain will be appropriate.

4.5 Caseworkers should bear in mind that for medical cases to engage Article 3, all the following requirements must be satisfied:

- the UK can be regarded as having assumed responsibility for a person's care; *and*
- there is credible medical evidence that return, due to a complete absence of medical treatment in the country concerned, would significantly reduce the applicant's life expectancy; *and*
- subject them to acute physical and mental suffering.

5. Returns

5.1 Returns under the Voluntary Assisted Return and Reintegration Programme (VARRP) are possible with immediate effect. Please advise applicants who wish to take advantage of the scheme to contact:

IOM London – VARRP

21 Westminster Palace Gardens

Artillery Row

London SW1P 1RR

Telephone 020 7233 0001

Fax 020 7233 3001

e-mail: varrp@iomlondon.org

www.iomlondon.org

5.2 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.