

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	537
Land:	Irak
Kilde:	Brev af 10. januar 2011 fra UNHCR
Titel:	Brev af 10. januar 2011 fra UNHCR til besvarelse af en henvendelse fra en advokat i en konkret sag
Udgivet:	10. januar 2011
Optaget på baggrundsmaterialet:	11. maj 2011



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

60

YEARS • ANNÉES

UNHCR

Regional Office for the Baltic
and Nordic Countries

Ynglingagatan 14, 6th fl.
SE-113 47 Stockholm

Tel.: +46 8 457 4880

Fax: +46 8 457 4887

Email: swest@unhcr.org

Date 10 January 2011

Notre/Our code: [REDACTED]

Re: Your inquiry concerning updated information on the application of internal flight alternative to a Kurd from Kirkuk to KRG

Dear [REDACTED]

Reference is made to your inquiry on UNHCR's updated position regarding the application of internal flight alternative (IFA) to the Kurdistan Regional Government Region (KRG) in Iraq.

In connection with your request and pursuant to UNHCR's supervisory role under its Statute and Article 35 of the *1951 Convention and 1967 Protocol relating to the Status of Refugees* (1951 Refugee Convention), we would hereby like to draw your attention to the *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, April 2009 and its Addendum, *UNHCR Note on the Continued Applicability of the April 2009 UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, 28 July 2010.¹

We would also like to refer to UNHCR's Guidelines on International Protection No. on "Internal Flight or Relocation Alternative" Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees.² UNHCR's Guidelines on International Protection set out UNHCR's authoritative legal position on the interpretation of the 1951 Convention and provide legal guidance to governments and practitioners.³ They are intended to be complementary to *UNHCR's Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967*

¹ UN High Commissioner for Refugees, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, April 2009, available at: <http://www.unhcr.org/refworld/docid/49f569cf2.html>, UN High Commissioner for Refugees, *Note on the Continued Applicability of the April 2009 UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, 28 July 2010, available at: <http://www.unhcr.org/refworld/docid/4c4fed282.html>.

² UN High Commissioner for Refugees, *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, 23 July 2003, HCR/GIP/03/04, <http://www.unhcr.org/refworld/docid/3f2791a44.html>.

³ Volker Türk, Introductory Note to UNHCR Guidelines on International Protection *Int J Refugee Law* (2003).

Protocol relating to the Status of Refugees and should be given the same weight as the Handbook in the determination of refugee status.⁴

It is our understanding that the Danish Immigration Service has rejected the application for protection of your client, [REDACTED], a single Iraqi male of Kurdish ethnicity originating from Kirkuk. It is also our understanding that the Danish Immigration Service has found that even if your client were to be found in risk of persecution at his place of origin (Kirkuk) by the Refugee Appeal Board, he can nevertheless be returned to KRG.

Procedural matters in assessing internal flight alternative

UNHCR would like to note that the criteria and the burden of proof applied to the examination of an application for asylum, should not be applied in the same manner in the context of an internal flight alternative assessment. Neither the wording nor the intended meaning of Paragraph 91 of UNHCR's Handbook support such an application in relation to the internal flight concept. Moreover, such an application would risk rendering the protection granted by Chapter 4, Paragraph 2, Section 2 of the Danish Aliens' Act redundant in cases concerning application of internal flight alternative.

Furthermore, UNHCR would like to note that basic rules of procedural fairness require that the asylum-seeker be given clear and adequate notice that the possibility of applying IFA is under consideration. They also require that the person be given an opportunity to provide arguments why the consideration of an alternative location is not relevant in the case, or, if deemed relevant, whether relocation to the proposed area is reasonable in the individual case.⁵

In view of the potential difficulties for some persons in entering and taking up legal residency in the KRG and the fact that access to certain rights may in practice be restricted on the basis of their ethnicity, religion or place of origin, any consideration of the KRG as an available IFA for persons for other parts of Iraq must be examined carefully and on a case-by-case basis.

Relevance of relocation to the Kurdistan Regional Government Region

As part of the assessment whether KRG can be *relevant* as an area of relocation, an assessment must be made whether it is legally and physically accessible for the individual and whether the applicant would have a legal right to stay in the area.

In the context of the Kurdistan Region, UNHCR would like to reiterate its *Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, April 2009 concerning Kurds originating from Kirkuk, who

⁴ UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, HCR/IP/4/Eng/REV.1 Reedited, Geneva, January 1992, UNHCR 1979.

⁵ UN High Commissioner for Refugees, *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, 23 July 2003, HCR/GIP/03/04, para 35 available at: <http://www.unhcr.org/refworld/docid/3f2791a4.html>

are among the groups of persons “who may not be able to find protection upon relocation in the three Northern Governorates. Such persons may not be admitted to the region, may still be targeted by the perpetrators of persecutory acts, or may have difficulties accessing basic services and therefore face undue hardship”⁶. Furthermore, UNHCR’s Guidelines explain that “persons from the “disputed areas” are generally discouraged or even prevented by the local authorities from returning to the region of Kurdistan, even if they had previously resided there.”⁷ Finally, “Persons that may be considered to pose a security risk by the KRG, particular single men, will not be allowed entry/or residency in KRG and can therefore not avail themselves of the protection by KRG authorities”⁸.

UNHCR would also like to share the following observations and analysis from October 2010 by its implementing partner, the Protection Assistance Center (PAC) in Erbil, complementing the information provided in UNHCR’s *Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, April 2009 and its Addendum, *UNHCR Note on the Continued Applicability of the April 2009 UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, 28 July 2010.⁹

There are three types of entry permits into KRG: tourism entry which allows an individual to remain between 1 to 30 days, a work related entry, allowing up to 15 days stay prior to renewal, or a long-stay entry, duration of which is unknown. According to the existing procedures, persons from other parts of the country who enter the KRG are required to register with the local authorities at the first encountered checkpoint where their basic information is collected and they are issued a document allowing entry. If an individual wishes to remain in the KRG beyond the period as outlined in this document, they are expected to approach the security department of the location they would like to stay within, and request to open a file, providing a local resident as a reference. However, it is important to note that these cards are not automatically renewed. Internally displaced persons (IDPs) are normally issued with the tourist card at the check point. During the month of November and December 2010, UNHCR collected further information from the Protection Assistance Centres and no PAC has reported any IDP to have received the residence card. All PACs stated that Arabs, Turkmen and Kurds from the disputed areas or those suspected of terrorism or pose a threat to the Region’s security will most likely face difficulties/rejection at the check point.

According to PAC, sponsorship cannot be provided by a private company. Although the authorities have indicated that the former “sponsorship” system has been replaced by the “reference” system, in practice the two are very similar in that they require both a Kurdish as well as a non-Kurdish Iraqi to have an Iraqi Kurd to serve as a reference. The reference cannot be another

⁶ UN High Commissioner for Refugees, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, April 2009, para 135, available at: <http://www.unhcr.org/refworld/docid/49f569cf2.html>.

⁷ Ibid. para 133

⁸ Ibid. para 123

⁹ Since this information has been obtained, no major changes have been identified by or reported to UNHCR on access to the KRG, either in law or practise.

internally displaced person. Individuals with no links to the region may thus face difficulties in securing a reference to vouch for them. According to information obtained in November and December 2010 from IDPs and PACs, the sponsor system remains to be in place and IDPs are required to have this guarantee to enter. These are conditions for entry regardless of the new name referred to by the authorities.

Some individuals and families are asked to provide a sponsor at the check point (either present in person or through a certified letter) in order to enter the KRG, while others will not be asked for a sponsor and will be given a tourist card, which allows them to stay up to 30 days. The discrepancies in these procedures seem dependant on the officer present at the check point; thus there are no harmonized procedures and they may vary from one officer to the other. Moreover, a sponsor is required when the family/individual approaches the neighbourhood security station to obtain an Information Card to get an extension on their residence in the KRG. The sponsor should originate from the Governorate that the individual/family is entering to and plans to reside in. If the individual/family decides to move to another Governorate another sponsor is required from that Governorate.

Every IDP must obtain an information card within the period given at the check point. i.e. if a family obtained a 10 day tourist card at the check point they must approach the security station before the card's expiry date to obtain their Information Card. IDPs with no Information Card are considered to be illegally residing in the KR and may face serious consequences. The Information Card is issued for a 3 month, 6 month, or a 12 month period. The Information Card provides the holder freedom of movement within the KR. In the case that the person wishes to relocate to another neighbourhood or Governorate, he/she must go through the procedures again.

To obtain an Information Card, IDPs must provide a sponsor, present a valid ID and have a lease showing rent of a house/apartment. The Asayesh will then approve or reject the stay of the individual/family. In the case of approval, the individual/family is then able to stay in the area that they obtained the approval from. Some PACs have informed UNHCR that the IDP requires the Information Card first in order to rent a house/apartment while others stated that the security require a copy of the lease in order to issue the Information Card. IDPs who are not able to secure a sponsor and obtain an Information Card are obliged to leave the KR.

It has been observed over the past year that approval or denial of entry into the KRG is not applied systematically and may depend on a number of factors, including who the officer in charge at the time of entry. In general, single males, and to some extent single females, face difficulties in gaining entry into the KRG.

PAC further notes that individuals and families continue to be subjected to different procedures. Although the entry process remains the same whether it is one individual or a family, it has been observed that issuance of longer term residence permits continues to be easier to obtain for families. Generally, for an individual to be granted a residence permit to reside in Erbil for an extended period of time, one of the following criteria should be met: the individual should be coming to study, he or she should hold an advanced

diploma, he or she should own a company, or the individual should have close relatives already residing there. Individuals (mostly single men) continue to be unable to rent housing.

It has been noted that whilst the KRG authorities claim to have a unified or uniform policy for entry and staying in the KRG, it is evident that in practice this is not the case. Both checkpoints and the issuance and renewals of the information cards vary between governorates. Inconsistencies have been noted in entry procedures that are followed at the checkpoints from one day to the next. Finally, a copy of written rules and regulations governing entry and residence procedures has never been provided by the authorities. During the months of November and December 2010, UNHCR undertook efforts to obtain information and clarification from the authorities on checkpoint practices and entry/residence in the KR, however UNHCR is still awaiting clear guidance and feedback concerning the practice and laws which are of concern.

In conclusion, UNHCR is of the view that for an individual with a Kurdish ethnicity originating from the **disputed areas** such as Kirkuk, the conditions for obtaining a legal right to remain in the area are not guaranteed and any consideration of IFA within the Kurdistan region can therefore not be relevant. A Kurd originating from the disputed areas should therefore not be compared with Kurds from Central and South Iraq.

Reasonableness of relocation to the Kurdistan Regional Government Region

In regard to analysis of whether internal flight is an reasonable option, the question is what is reasonable, both subjectively and objectively, given the individual claimant and the conditions in the proposed internal flight or relocation alternative. Can the claimant, in the context of the country concerned, lead a relatively normal life without facing undue hardship? Factors that need to be taken into consideration are the applicant's personal circumstances, safety and security, respect for human rights and economic survival.

There is a risk that the applicant may become internally displaced if relocated to KRG. UNHCR would like to note that the presence of some 35,000 internally displaced families in the KRG places a strain on both infrastructure and the local economy.

While internally displaced persons in theory can engage in casual labour or be employed by the private sector, they face difficulty in accessing the labour market because of high rates of unemployment and also because they are not eligible for employment with the government, the region's largest employer, with about 70% of the government budget allocated to government salaries. Internally displaced persons compete for low paid daily hire manual work, competing with local residents or third country nationals.

Internally displaced persons have access to courts, and free legal aid and representation from NGOs. In practice, however, limitations have been noted on the capacity to follow up and obtain concrete results on a number of legal cases due to the different orders or policies of the government. For example, PDS cards (Public Distribution System) can not be transferred from one

Governorate to the other. Internally displaced persons must, renew their ID in person in their place of origin and not in the place of displacement, etc. It has been observed that such obstacles lead to many legal issues left unresolved and pending indefinitely.

In addition, internally displaced persons need to obtain clearance from the Ministry of Interior in order to purchase immoveable property. In Erbil and Dohuk, only professionals, such as university professors, doctors, engineers, businessmen etc can purchase immoveable and moveable property whereas non-professionals can only purchase moveable property. In Suleimaniah, these restrictions do not apply and anyone can purchase moveable and immoveable property. UNHCR has not been able to obtain written guidelines regarding property rights and administration in the KR. As noted in Danish Immigration Service's *Entry Procedures and Residence in Kurdistan Region of Iraq for Iraqi Nationals*, it has been observed that in practice, authorization for persons from outside the KRG to purchase property appears to be linked directly to their religious, ethnic, or geographic origin. UNHCR has received reports that persons of Kurdish origin from the disputed territories may not purchase real estate. Kurds and Christians from the disputed territories may only purchase property if they hold a national ID card registered in Erbil prior to 2003.

Most recently, Walter Kaelin, the Representative of the Secretary-General on the Human Rights of internally displaced persons (RSG), expressed his concern in a press release of 3 October 2010 about "chronic poverty among displaced communities," difficulties for IDPs in securing employment, and continued challenges in securing benefits or status IDPs may otherwise be eligible for in their places of origin, such as pensions or PDS cards.

A careful assessment of the reasonableness of internal flight in the claimant's case would be needed taking into his personal circumstances and links to the proposed area to ensure that such a relocation would not amount to undue hardship.

Yours sincerely,



Liv Feijen

Senior Regional Legal Officer