Neutral Citation Number: [2006] EWCA Civ 342

Case No: C5/2005/1856

IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ASYLUM AND IMMIGRATION TRIBUNAL

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/03/2006

Before :

LORD JUSTICE PILL
LORD JUSTICE SEDLEY
and
SIR PETER GIBSON

- -

Between :

JASIM	**Appellant**
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

- -
- -

Ms R Chapman (instructed by Deighton Guedalla) for the **Appellant**
Mr J Litton (instructed by Treasury Solicitors) for the **Respondent**

Hearing date: 27 January 2006

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Judgment

Lord Justice Sedley :

1. This appeal, while like all asylum appeals it is fact-specific, concerns the relationship of the independent adjudication process to the expert and 'objective' evidence which is placed before the adjudicator. The issue is of course not peculiar to asylum adjudication, but it arises there frequently and often sharply. This is such a case.

2. The decision we are concerned with is a decision made by way of reconsideration under the transitional arrangements by an immigration judge, Mr D Bartlett, to whom the Immigration Appeal Tribunal had remitted the appellant's appeal against the Home Secretary's rejection of his asylum and human rights claims, following a flawed initial rejection of that appeal by another adjudicator. The decision before us is therefore a first-instance, not an appellate decision. Permission to appeal to this court was given by Moses LJ, who considered it arguable that the immigration judge had erred in law in rejecting the expert evidence adduced by the appellant. For the appellant, Rebecca Chapman invites this court to allow the appeal outright, or in the alternative to remit it for a fresh hearing.

Evidence on appeal

3. One aspect of the appeal process requires comment. In seeking permission from the AIT to appeal to this court, the appellant's lawyers submitted a response by their expert, Dr Alan George, to the immigration judge's dismissal of his report as containing no rational basis for his conclusions. This is not an appropriate course. While it is perfectly proper for the essence of any such response to be incorporated by way of argument in the grounds submitted to the AIT, the submission of the witness's own response amounts to an attempt to introduce new evidence. We have accordingly treated Dr George's response not as evidence but, so far as material, as argument.

The format of AIT decisions

4. A comment is also needed on the format of the immigration judge's determination and reasons. While these have been written with obvious care, some of the paragraphs are of unmanageable length. The findings in paragraph 16 alone run on for almost three pages of single-spaced type, making reference to any particular passage unnecessarily difficult. It is important, since the purpose of these documents is to be able to be understood and analysed, that reasons should be set out – as indeed they commonly are - in manageable paragraphs and sub-paragraphs, with cross-headings where appropriate.

Background

5. The history given by the appellant and accepted by the immigration judge was in summary this. He is an Iraqi Kurd born in 1978 to a Sunni family, who fled Iraq in January 2003, not long before the Coalition invasion which overthrew the regime of Saddam Hussein. When the appellant had tried to evade military service, his father

was arrested and was released only when both of them agreed to join the Ba'ath Party. The appellant had subsequently been detained for taking part in a play hostile to the regime, and had become involved in the illegal transportation of goods to Erbil for the Iraqi National Congress (INC). He finally fled the country when the authorities seized the lorry.

6. Since that time, three things had happened which caused him to fear for his future safety. First, he had learned from a neighbour with whom he had made contact that the driver of the lorry, Mam Rustem, had been detained and killed by the authorities, and that his family, who were Shia Kurds, wanted revenge on the appellant. The group threatening this revenge were the Shia Islamic Group, who had also seized the appellant's family's business. Secondly, because they believed that it was the appellant who had betrayed the driver, the INC in Kirkuk had put his name on a blacklist. Thirdly, his family had fled from their home, and the Islamic Movement Party members who had moved in had discovered the family's Ba'ath Party affiliation.

The decision below

7. In the early part of his decision (§14), while setting out his findings of fact and before reaching the in-country and expert evidence, the immigration judge found that the appellant's consequent fears were well-founded but only in relation to the Kirkuk area. The greater part of this paragraph needs to be set out, because it shows the immigration judge's process of reasoning:

> 14. …I am not satisfied, however, that the appellant has established to the necessary lower standard that his fears in relation to the Shia group to which he refers and the INC relates to areas of Iraq outside the appellant's home area of Kirkuk. The appellant's fears are based on what was told to him by a neighbour on the telephone. The basis of this neighbour's report (see pages 21-22 of the appellant's bundle of documents) were that the appellant's family were now very unpopular in the area because it had been found out that the appellant and his father had changed their ethnicity and joined the Ba'ath Party. The neighbour had also said that the family's name had been published in a blacklist of persons who used to be spies for Saddam. The neighbour had said that he had seen the appellant's name denounced on an INC publication because they had found out that he had signed up to the Ba'ath Party. It was the appellant's evidence that the neighbour had told him not to come back because he was in danger from the Shia and everyone in Kirkuk who opposed Saddam. The appellant's evidence does not suggest that the blacklist and fears relate to areas other than Kirkuk – in view of what had been found out in Kirkuk by the Shia Muslim group and the INC. The appellant in re-examination by his legal representative at the appeal hearing also stated that he was afraid of the Shia group because of the sons of his driver who had died in detention. He emphasised that his fears of the Shia group were also because he was known in Kirkuk as someone involved with the Ba'ath Party. The appellant does state in paragraph 36 of his statement (at page 24 of the appellant's bundle of documents) that he fears the Shia Muslims because they are in power and he will not have any protection. He states that the Shia and the INC have power all over Iraq – not just in Kirkuk so there is no where he could safely go.

> In this regard I would note that the export report (at page 41 of the appellant's bundle of documents) states that expert considers that the appellant's fear in this regard is in his view not well-founded. He stated that Iraq's Shia Muslims are far from being a homogeneous block and are rather divided into many movements and factions. It is added that the INC is not predominantly a Shia organisation as such and is much more an umbrella group including non-Shias. It is further stated that it is correct that Iraq's Shia community is now the dominant political power in Iraq holding a larger number of parliamentary seats than any other of Iraq's communities – but it is not correct to say that the Shias as a whole constitute a united force. It is also stated that nor can the expert see any reason why the Shias as a whole would have any significant adverse interest in the appellant. On this basis I am not satisfied that the appellant has established to the necessary lower standard that his fear of the Shia Islamic group he describes and the INC blacklist he describes relate to areas other than Kirkuk. The appellant has not established to the necessary lower standard that any blacklist on which he has been included relates to Iraq as a whole as opposed to the Kirkuk area in which the appellant resided.

8. It can be seen that the reasoning concerns the consequences of the fact that, while the Shia are politically dominant in Iraq, neither they nor the INC are a homogeneous or nationally coherent group: hence the limitation of risk to the Kirkuk area, where he accepted (§16) that the appellant had a well-founded fear of persecution for reasons either of political opinion or of ethnicity. But, as the judge went on immediately to recognise (§15), this by itself did not answer the appellant's case. The remainder of the case was therefore concerned with the possibility of safe relocation elsewhere in Iraq.

9. As to this, the immigration judge said (§16):

> "… Dr George states that the relatives of Mam Rustem through their family and tribal contacts would have little difficulty locating the appellant anywhere in [the Kurdish north of Iraq]. He further states that albeit with greater difficulty they could well be able to locate the appellant were he to relocate in the non-Kurdish centre of south of Iraq. Dr George, however, gives no basis for reaching any of these conclusions… There is nothing in the documentation or evidence to suggest that there is a reasonable degree of likelihood that that the influence of the relatives of Mam Rustem would be such as to extend throughout Kurdish north Iraq…I accept that Dr George goes on to state … that the relatives would have little difficulty in contacting the appellant anywhere in Iraq. I emphasise, however, that no rational basis for this approach is provided in the report."

It is the words which I have underlined that are at the centre of this appeal.

10. The immigration judge went on in the same paragraph to summarise Dr George's evidence that if (as to which there seems to have been no evidence) the appellant had no family or clan connections in Baghdad, relocation there would not be a realistic option, particularly in view of the current housing and economic crisis. But –

> "The evidence overall, including the expert report of Dr George, indicates that there are very large Sunni Muslim Kurdish communities in northern Iraq and in Baghdad. The evidence overall does not establish a reasonable degree of likelihood that if the appellant were to relocate in any of these communities … the relatives of Mam Rustem would become aware of his presence. Nor does the evidence establish a reasonable degree of likelihood that persons outside Kirkuk would be aware that the appellant was on an INC blacklist because of having assisted the Ba'ath Party."

11. The immigration judge then turned (still in the same long paragraph) to the UNHCR report which, in relation to internal relocation in Iraq, stressed "the pervasive and influential clan and tribal structures" and "the generally violent and lawless situation" especially in cities such as Baghdad. But he noted the IAT's guideline decision [2004] UKIAT 00248 which, at §115-6, set or acknowledged a lower standard than the UNHCR for acceptability of internal relocation. He accordingly held:

> "If the appellant were returned he would be returned to Baghdad. On the basis of the facts I have found proved the appellant has not established a reasonable degree of likelihood that any Shia Muslim group in Baghdad would have any adverse interest in him …[or] … that the family of Mam Rustem would become aware of his presence in Baghdad."

12. He went on to hold that, albeit there was no evidence that the appellant had any clan or family connections with the Kurdish Sunni community in Baghdad, and while relocation there would therefore "undoubtedly be substantially difficult", nevertheless for a young man with entrepreneurial experience it would not be unreasonable, unduly harsh or unsafe – at least, no more so than for most other people in Baghdad. The same would be true, he held, of Kurdish areas outside Kirkuk.

This appeal

13. If this much of the decision was tenable, it is accepted by Ms Chapman that no separate claim remained under article 3 of the human rights convention. By parity of reasoning, if the refugee claim succeeds on the grounds advanced, so does the human rights claim under art.3 irrespective of the characterisation of the reason for the feared persecution. It was and is accepted that the clinical evidence that the appellant is suffering from chronic moderate PTSD, while undisputed, founds no separate claim.

The expert evidence

14. The first and principal ground of the present appeal is that the immigration judge was not entitled to dismiss Dr George's evidence about the ubiquity of risk to the appellant throughout Iraq, and that he erred in law in doing so. That evidence, Ms Chapman submits, was perfectly coherent and entitled, or at lowest enabled, the appellant to

succeed. It was not open to the immigration judge to dismiss the report on the grounds cited in §9 above.

15. No doubt was cast before or by the adjudicator upon Dr George's expertise or credentials, and there was no evidence in direct opposition to his. He is an experienced writer and consultant upon and analyst of middle eastern political and economic affairs, a senior associate member of St Anthony's College, Oxford (whose Middle East Centre is an acknowledged centre of excellence), and since 1989 a specialist commentator upon Iraq.

16. The possibility of internal relocation is relevant to refugee and human rights claims because it may demonstrate that a fear of persecution or harm, though warranted by the applicant's experience in his place of origin, is not well-founded in relation to other parts of the state whose duty it is to protect him. But while the two issues – fear and relocation - go ultimately to the single question of safety, they cannot be decided in the same breath. Once the judge of fact is satisfied that the applicant has a justified fear of persecution or harm if returned to his home area, the claim will ordinarily be made out unless the judge is satisfied that he can nevertheless be safely returned to another part of his country of origin. Provided the second issue has been flagged up, there may be no formal burden of proof on the Home Secretary (see *GH* [2004] UKIAT 00248); but this does not mean that the judge of fact can reject an otherwise well-founded claim unless the evidence satisfies him that internal relocation is a safe and reasonable option.

17. It is necessary to stress both adjectives - safe and reasonable. It is well established that relocation to a safe area is not an answer to a claim if it is unreasonable to expect the applicant to settle there. There may be no work or housing. He may not speak the language. Similarly, relocation to an area may be perfectly reasonable by these standards but unsafe, for example because of the risk of continued official harassment or - as in this case – revenge-seeking.

18. Ms Chapman's point is short and straightforward: contrary to what the immigration judge holds, Dr George had not failed to set out the basis of his evidence that the appellant would not be safe in Baghdad or in Kurdish north Iraq. It was that family, clan and tribal networks would readily lead to his identification and location, whether in Baghdad or elsewhere, at the hands of his pursuers.

19. For the Home Secretary, John Litton submits that it is wrong to fasten upon this one sentence in the decision. Read as a whole the decision engages properly with the question of the appellant's safety in Kirkuk, in Kurdish north Iraq, in Baghdad and elsewhere in the non-Kurdish centre and south of the country. It concludes on tenable grounds that the appellant can reasonably and safely live outside Kirkuk.

20. I have set out earlier in this judgment (§8) the immigration judge's summary, in the course of his long §16, of Dr George's evidence on this topic. It is a very fair summary, but the two material paragraphs of Dr George's report should nevertheless be set out in full:

> **The practicalities of relocation within Iraq**
>
> 53. In my view, and based on his testimony, Mr Jasim, as a perceived agent of the former regime and as the person held responsible for the death of the driver Mam

> Rustem, would be under threat if he were to live in his home town of Kirkuk or anywhere else in the Kurdish north of Iraq. The relatives of Mam Rustem, through their family and tribal contacts, would have little difficulty locating him anywhere in this region. Albeit with greater difficulty, they could well be able to locate him were he to relocate to the non-Kurdish centre or south of Iraq.
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> 54. Quite apart from the very important matter of security, however, there are powerful social reasons why Kurds such as Mr Jasim cannot easily relocate to the non-Kurdish parts of Iraq. It is a fundamental feature of Iraq – as in the wider Middle East – that its societies are organised on ethnic and religious bases. People look first to their ethnic or religious group for support and protection, and this characteristic is underpinned by the importance of the tribe and extended family as the core social unit in this region. In the case of Kurds, this strong identification with family, clan and community is powerfully reinforced by the Kurds' different language and by their unique cultural traditions. Baghdad does have a substantial and long-established Kurdish community but I am not aware that Mr Jasim has family or clan connections there. Assuming that he has none, relocation to Baghdad would not be realistic option for him, especially in view of the economic crisis and housing shortage now afflicting Iraq. I would add that Kurds in the Sunni centre of Iraq – a region that includes Baghdad – have been the target of attack by insurgents, as I have noted at Paragraphs 24-25 of my report above, although I am unaware of any reports of similar attacks on the Kurds in Baghdad to date.

Importantly, this passage is preceded in Dr George's report by a careful account of Iraq's political and tribal structure and culture.

21. What the immigration judge must have had in mind, since Dr George is explicit in identifying family and tribal contacts as a likely means of tracking the appellant and in pointing out the presence of a substantial Kurdish community in Baghdad through which such information might travel, is that the report gives no particulars of how or in what circumstances this could be expected to happen.

22. If so, I do not think that this was a fair criticism of Dr George's testimony. His evidence in these two paragraphs was that relocation in Baghdad, if it was to be reasonable, would mean relocation among the Kurdish community there; that this community was based upon tribe and extended family; and that in such circumstances the appellant's persecutors from Kirkuk could well find him, even if not as readily as in Kirkuk or the KAA. I do not think it is incumbent on an expert witness who is able to testify to the existence, character and efficacy of such networks to specify exactly how they function before his evidence can be said to have a rational basis. To ask as much is to ask the very nearly impossible.

23. It is true that the report in §54 moves without making a forensic distinction from safety to reasonableness, so that the presence of the Kurdish community in Baghdad is related by Dr George principally to the fact that, without family or clan links to it, it would not afford the appellant any help with resettlement – that is, would not be reasonable. But it was the function of the immigration judge to distinguish in his analysis and reasoning between the two. Had he done so, he would have appreciated that the evidence threw up a contradiction which he had to resolve: if relocation in Baghdad was a reasonable course for the appellant (as he held it was), it was because there was a large Kurdish community there – but it was on Dr George's evidence the

family and clan networks within that very community that made Baghdad dangerous for him. Reasonableness and safety, in other words, in this case pulled in opposite directions.

24. In my judgment it was a material error of law for the immigration judge not to appreciate this and instead to treat the evidence of risk in Baghdad as unfounded. Indeed Mr Litton does not argue that the immigration judge was justified in holding that Dr George's opinion was unsupported by his evidence. His case is that, irrespective of this, there was adequate evidence that allowed him to reach the conclusion he did. The question is therefore whether the immigration judge's error in appraising Dr George's evidence vitiates his conclusion on relocation, or whether the conclusion can stand despite it.

25. I have focused so far on Baghdad because that is what the immigration judge did: see the citation in §11 above. Baghdad, with its Kurdish community, was the high point of the Home Secretary's argument for safe and reasonable relocation. Accepting this argument, the immigration judge concluded (§16 *fin*) that "it would not be unreasonable or unduly harsh for the appellant to internally relocate in Baghdad to where he would be returned (or to Kurdish areas of Iraq other than Kirkuk)". But, as the use of parentheses more or less acknowledges, the risk to the appellant was at least as great in Kurdish north Iraq as in Baghdad. As Dr George had said: "The relatives of Mam Rustem, through their family and tribal contacts, would have little difficulty locating him anywhere in this region."

26. Thus, even if one accepts Mr Litton's invitation to consider the totality of the immigration judge's findings about risk, they depend in one degree or another upon his mistaken rejection of Dr George's testimony about it. I do not think it is right to extract from the long §16, as one can undoubtedly do, facts which by themselves would justify a conclusion that the appellant would be reasonably safe in Baghdad. On Dr George's evidence, the relatives of Mam Rustem, never mind the others interested in him, would be likely to find him there, as in the Kurdish north. If this evidence was to be found inconclusive, as perhaps it might have been, it needed to be on a sound forensic ground, not on the erroneous ground that, by failing to justify the opinion it expressed, it failed to pass muster as expert evidence. For example, as Dr George accepted, it would be harder for Mam Rustem's family to find the appellant in the non-Kurdish centre and south outside Baghdad, though he thought the risk real there too; but there is no finding about it by the immigration judge because, having dismissed Dr George's contrary opinion as speculative and irrational, he has settled on Baghdad as a place of sufficient safety.

The status of UNHCR advice

27. Ms Chapman's second ground of appeal is of more general application. It is that Dr George's evidence was corroborated by the UNHCR's advice that without family or tribal links in Baghdad, "relocation without prior acceptance of the local tribal / clan leaders would expose the individual to a serious risk of rejection by the community, resulting in physical insecurity and/or undue hardship".

28. The immigration judge approached this evidence in the light of the IAT's decision in *GH* CG [2004] UKIAT 00248. That country guidance decision on Iraq deals obiter at

§116-7 with some aspects of internal relocation (I have mentioned one at §15 above). It came before this court on appeal (EWCA [2005] Civ 1182), but was decided on a different issue.

29. The IAT expressed the sweeping view that

> "… the UNHCR's propositions on internal relocation do not accord with the United Kingdom jurisprudence on the subject and again stray into areas of general humanitarian concern which have no place in the consideration of internal relocation under our own case law which imposes a significantly higher standard before relocation can be regarded as unreasonable because unduly harsh."

They cite in support of this passage the case of *Robinson* [1997] Imm AR 568, which is the leading authority on internal relocation but does not support their wide proposition, and a passage from *AE and FE* [2003] EWCA Civ 1032 which establishes only that it may be reasonable and safe to relocate in an area even if many basic rights are not enjoyed there.

30. In my respectful judgment, these two paragraphs of the IAT's decision in *GH* should not be treated as laying down any proposition of fact, evidence or law for other tribunals. They do not purport to be more than a comment, and they certainly do not justify what follows at §117:

> "In our view it would be an error of law for an Adjudicator to consider internal relocation by reference to the UNHCR paper."

31. The immigration judge in the present case referred to the decision in *GH,* albeit in relation to the UNHCR report subsequent to the one excoriated by the IAT, but he did not observe the purported ruling contained in §117. On the contrary, he said in the course of §116: "I take careful account of the UNHCR recommendations on internal relocation".

32. This was the correct approach. It would be an error of law, in my judgment, for an immigration judge dealing with return to Iraq to refuse on principle to consider any UNHCR Advisory Report on Iraqi asylum-seekers and refugees upon which reliance was placed. His or her task is to decide what passages, if any, are relevant and to gauge the weight to be given to them in the context of the rest of the evidence and argument. That, notwithstanding his citation of the IAT decision in *GH*, is what the immigration judge in this case sought to do. It is also what another division of the IAT did in a subsequent country guidance decision on Iraq, *SM* [2005] UKIAT 00111: see §275. This decision was in fact cited by the IAT in its reasons for refusing permission to appeal to this court; but while it is a decision to which any subsequent immigration judge must of course pay careful attention if the case involves return to Iraq, it cannot furnish the appellant with a further reason for oversetting the decision which is before us.

The security situation in Baghdad

33. Ms Chapman's third ground is that the immigration judge did not properly consider the security situation in Baghdad. He certainly did not overlook it, but he dealt with it in the latter part of §16 by holding, in reliance on the IAT's decision [2004] UKIAT 00272, that exposure to civil war or disorder, which was nearly enough the prevailing situation in Iraq, did not amount by itself to persecution or to inhuman or degrading treatment. This may be right, but it misses the point. It may be that the safety of relocation can be limited to safety from the otherwise well-founded fear that has ex hypothesi been established. But relocation must also be reasonable, and we have been shown no authority which suggests that returning a person to a situation of armed anarchy will always be reasonable. At the same time, as the adjudicator went on to note, humanitarian law distinguishes generally between risks affecting the individual and risks affecting everyone.

34. For my part I do not consider the answer to this question to be a matter of law. In my judgment a judge deciding the reasonableness of a proposed relocation cannot ignore the physical conditions prevailing there; equally his or her decision cannot be dictated by them. They are part of an often difficult judgment which has to be arrived at on whatever evidence is available. I would not therefore be disposed to allow this appeal on this ground, but I would hold that on reconsideration the physical risks attendant on relocation will be relevant to its reasonableness.

Conclusion

35. In my judgment the immigration judge's otherwise impressively careful and detailed decision is vitiated by an error of reasoning about the safety of internal relocation which goes to the heart of the case. The case is not one which this court can decide because it depends on an appraisal of complex facts – including, so far as relevant, those indicated by the UNHCR's report. There is no alternative to remission of the case for rehearing and determination by another immigration judge in accordance with the judgments of this court. I would allow the appeal and so order.

Sir Peter Gibson:

36. The primary issue raised by this appeal was described by Miss Chapman for the appellant in these terms:

> "Whether the Immigration Judge erred materially in law in his assessment of internal relocation in his reasons for disregarding the expert evidence of Dr George and for failing to place any weight o[n] the UNHCR guidelines of September 2004, which corroborate Dr George's opinion that it is the "pervasive and influential clan and tribal structures in Iraq" which exposes an individual to risk in an internal relocation."

37. That description of the issue criticises the judge for "disregarding" Dr George's evidence and for "failing to place any weight" on the UNHCR guidelines. Neither criticism seems to me justified.

38. To take the latter criticism first, the judge stated expressly that he took careful account of the UNHCR recommendations on internal relocation, in which reference was made to the pervasive and influential clan and tribal structures quoted by Miss Chapman in formulating the primary issue. However, it was for him to assess the weight to be given to the recommendations in the light of all the circumstances. I see no error of law in what he said on this point.

39. As for whether the judge disregarded Dr George's evidence, it is plain that the judge had regard to that evidence, although "on the evidence as a whole", of which Dr George's report only formed a part, he did not accept Dr George's opinion that the relatives of Mam Rustem would have little difficulty in locating the appellant in the Kurdish area in the north of Iraq and could well be able to locate him, albeit with greater difficulty, were he to relocate to the non-Kurdish areas of central or southern Iraq. The real question is whether the judge erred in law in not accepting that opinion.

40. It is to be noted that the judge, when reciting Dr George's opinion, did so in terms which recognised that it was Dr George's view that "through their family and tribal contacts" Mam Rustem's relatives were able to locate the appellant. It follows that, when the judge said in paragraph 16 of his decision that "Dr George … gives no basis for reaching any of these conclusions", he was saying that Dr George had not explained how it could be said that in this case the relatives' family and tribal contacts enabled them to locate the appellant anywhere in Iraq. The judge described as speculative the suggestion by Dr George that the relatives would have little difficulty in locating the appellant elsewhere than in Kirkuk in Kurdish north Iraq and pointed out that it is a geographically substantial area with a population of some 3.7 million Kurdish Iraqis. All that is stated by Dr George in his report about the relatives is that Mam Rustem had two sons, whom Dr George names, and that they are Faili Kurds, whom Dr George describes as a sub-group of Kurds, differentiated from the Sunni majority of Kurds mainly by their Shia religion. Similarly, when the judge 20 lines later, in referring to Dr George's opinion that the relatives would have little difficulty in contacting the appellant anywhere in Iraq, emphasised that "no rational basis for this approach" was provided in the report of Dr George, the judge cannot reasonably be taken to have forgotten what he said 20 lines earlier but must be understood to be making the same point. Whilst the judge can be criticised for his choice of words – there is no question of irrationality in the report – it seems to me sufficiently clear what the judge meant.

41. In my judgment the judge, looking at all the evidence, was entitled to take the view that the available evidence did not establish a reasonable degree of likelihood that, if the appellant were to relocate himself in one of the very large Sunni Kurdish communities in northern Iraq or in Baghdad, the Shia Kurdish relatives of Mam Rustem would become aware of his presence. The judge was not obliged to accept the opinion of Dr George on the point. I see no material error of law in the judge's conclusion on this.

42. For these as well as the reasons given by Pill LJ I too would dismiss this appeal.

Lord Justice Pill:

43. I gratefully adopt Sedley LJ's recital of the issues, the background and the facts. I agree with Sedley LJ that, when considering internal re-location, reasonableness and safety are distinct concepts though they both require consideration when reaching a decision. I also agree that the present case turns upon the safety element, that is, on the assessment of the risk of persecution, if any, upon re-location. The manner of such assessments may in some respects need to be reviewed in the light of the guidance given by the House of Lords, since the hearing of the present appeal, in *FC and others v Secretary of State for the Home Department* [2006] UKHL 5 but the outcome of the appeal does not turn upon issues raised in those cases.

44. I am, however, unable to agree that the immigration judge erred in law in his appraisal of the evidence on the issue of safety. That Dr Alan George was qualified to provide the report on Iraq he did is not in doubt and the report was a helpful contribution to the in-country information available to the immigration judge. It was, however, not the only information and the judge set out, at paragraph 11, the other material before him:

> "In respect of objective material the respondent's representative produced the latest CIPU Report in respect in Iraq dated April 2005. The appellant produced a bundle of objective material indexed at page 66-134 of the appellant's bundle of documents. This included:
>
> (a) A United Nations Report on Iraq dated 8 December 2004:
>
> (b) the US State Department Report in respect of Iraq dated 28 February 2005;
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> (c) various news reports in respect of Iraq.
>
> I have been referred by the appellant's and respondent's representatives to relevant aspect of the objective material and will refer to these aspects where appropriate when analysing the evidence in this matter."

45. It is clear that the judge did take the material into account when assessing the appellant's case. He stated expressly, as Sedley LJ acknowledges, that he took careful account of the UNHCR recommendations on internal re-location and I agree with Sedley LJ that no separate ground of appeal arises from his treatment of the UNHCR Report. Moreover, immigration judges have developed an expertise in assessing in-country information, and deciding particular cases in the context of that information, and their expertise is entitled to respect.

46. Sedley LJ has set out paragraphs 53 and 54 of Dr George's report. Dr George's conclusion is at paragraph 57:

> "In my opinion, Mr Salam Jasim's testimony is plausible, with the exceptions that I have noted. In my view and based on his testimony, if he was returned forcibly to Iraq he would be at

> risk of being targeted either because of his perceived role as an agent of Saddam Hussain's regime or because of his perceived responsibility for the death of the driver Mam Rustem. The Iraqi authorities would certainly be unable to guarantee his security. In my opinion he would be especially unsafe in the Kurdish north of Iraq although he could also be targeted in Iraq's non-Kurdish areas."

47. I agree with the comments Sedley LJ has made about the format of the judge's determination and reasons, and in particular the comments on paragraph 16, where the judge's main reasoning appears. The use of conventional paragraphs in judgments is a useful aid to the reader of judgments and, I say with respect, usually the writer too.

48. It is necessary to set out three extracts from the long paragraph 16:

> "Dr George states that the relatives of Mam Rustem through their family and tribal contacts would have little difficulty locating the appellant anywhere in this region. He further states that albeit with greater difficulty they could well be able to locate the appellant were he to relocate in the non-Kurdish centre or south of Iraq. Dr George, however, gives no basis for reaching any of these conclusions. While on the evidence it would clearly be possible for the relatives of Mam Rustem to locate the appellant were he to return to Kirkuk – it is speculative to suggest that they would have little difficulty in locating him elsewhere in Kurdish north Iraq. The remainder of Kurdish north Iraq includes the old Kurdish Autonomous Zone and the objective material indicates that it is a geographically substantial area with a population of some 3.7 million Kurdish Iraqis. There is nothing in the documentation or evidence on record to suggest that there is a reasonable degree of likelihood that the influence of the relatives of Mam Rustem would be such as to extend throughout Kurdish north Iraq. The appellant when specifically asked, at the appeal hearing why he could not relocate elsewhere in Iraq stated that the Shia are a large group and are powerful and they can carry out threats. He added that he was afraid of the Shia group because of Rustem's sons and because he was known in Kirkuk as someone involved with the Ba'ath Party. I have already accepted Dr George's report (at page 41) where he states that he can see no reason why the Shia as a whole would have any significant adverse interest in the appellant. I accept that Dr George goes on to state at paragraph 53 of his report that the relatives would have little difficulty in contacting the appellant anywhere in Iraq. I emphasise, however, that no rational basis for this approach is provided in the report. It is also stated by Dr George in his report (at paragraph 54) that quite apart from the very important matter of security there were powerful social reasons why Kurds such as the appellant cannot easily relocate to the non-Kurdish parts of Iraq. He refers to Iraqi society being organised on ethnic and religious bases. He states that with the Kurds there is a strong identification of family, clan and community. He states that

> Baghdad does have a substantial and long established Kurdish community but that he is not aware whether the appellant has family or clan connections in Baghdad. He states that assuming the appellant has none relocation to Baghdad would not be a realistic option for him especially in view of the economic crisis and housing shortage now afflicting Iraq. The evidence overall including the expert report of Dr George indicates that there are very large Sunni Muslim Kurdish communities in northern Iraq and in Baghdad. The evidence overall does not establish a reasonable degree of likelihood that if the appellant were to relocate in any of these communities – that the relatives of Mam Rustem would become aware of his presence ...
>
> On the basis of the facts I have found proved the appellant has not established a reasonable degree of likelihood that any Shia Muslim group in Baghdad would have any adverse interest in him. The appellant on the basis of the facts I have found proved has also not established a reasonable degree of likelihood that the family of Mam Rustem would become aware of his presence tin Baghdad … Accordingly on this basis I do not consider that on the evidence overall it could be stated that the general situation in Baghdad (or the Kurdish areas of Northern Iraq) would be such as to make it unreasonable, unduly harsh or unsafe for the appellant to internally relocate in Baghdad."

49. In my judgment, the judge was entitled to reach the conclusion stated. Dr George's conclusion was moderately expressed, no doubt advisedly: "he [the appellant] could also be targeted in Iraq's non-Kurdish areas". That raises a possibility but does not establish that he would in fact be targeted. Having accepted that the family of the lorry driver Mam Rustem had on one occasion expressed to a former neighbour of the appellant a wish to take revenge on the appellant, the judge considered in detail, and with his knowledge of conditions in Iraq, whether there was a risk to the appellant away from Kirkuk. The judge had in mind the size and population of Iraq and the differing circumstances existing in different parts of the country; as well as the importance of family units and the revenge culture. The judge considered the evidence, including that of Dr George, and concluded that there was not such a risk. He was entitled to reach that conclusion and has not erred in law.

50. On a reading of the determination as a whole, what the immigration judge had in mind when he used the expression 'no basis' and 'no rational basis', in relation to Dr George's report, was the lack of evidence establishing a link between a threat which he accepted had been made against the appellant in Kirkuk and a risk of persecution elsewhere in Iraq. The use of the expression 'no rational basis' may have been inappropriate as suggesting irrationality but the failure found by the judge was in that lack of evidence, in a context which the judge understood.

51. The claim under the Human Rights Convention fails on the same basis.

52. I would decide the case on the above basis and without deciding whether the risk of a revenge attack would in the circumstances amount to persecution within the meaning of the Refugee Convention.

53. I would dismiss this appeal.