



COUNTRY POLICY BULLETIN

IRAQ

IRAQ POLICY BULLETIN 1/2009

1. Introduction

- 1.1 This Bulletin replaces and reiterates the policy set out in Iraq Policy Bulletin 2/2006 v3.0 (issued 1 August 2006) on the implications of the Court of Appeal judgment in the case of Rashid and the High Court judgment in the cases of *R (A): (H) & (AH)* on asylum or human rights claims made by Iraqi nationals.
- 1.2 The policy set out in this Bulletin is limited solely to cases that fall within the scope of Rashid and *R (A): (H) & (AH)* caselaw, and the arrangements for the retrospective application of the policies dealt with in those cases in order to rectify the unfairness identified by the court.
- 1.3 This Bulletin also provides further clarification of the guidance contained in Iraq Policy Bulletin v3.0 following the judgment of Blair J in *R (on the application of Shashwar) v SSHD* [2008 EWHC 2069 Admin]. In that case, the court interpreted Iraq Policy Bulletin 2/2006 in a manner which differed from that which had been intended by the Secretary of State. While the Home Office is seeking to appeal against that judgment, it is appropriate in the meantime to remove any further doubt as to the intention and effect of the policy. A number of similar cases which are relying on the *Shashwar* judgment in appeals against decisions to refuse ILR have been stayed by the Courts pending the outcome of the appeal in *Shashwar*. Those cases remain stayed.

2. Removals

- 2.1 The policy set out in this Bulletin does not have any effect on the policy regarding enforced returns to Iraq. Enforced returns of those who have no basis to remain in the United Kingdom continue to be taken forward on a case by case basis. Voluntary returns are possible to all parts of Iraq and Iraqi failed asylum seekers may return home voluntarily, with the assistance of the International Organization for Migration (IOM).
- 2.2 However we should not seek to enforce the removal of failed asylum seekers whose cases have the potential to fall within the scope of the *Rashid* judgment and/or the cases of *R (A): (H) and (AH)*, pending consideration of their cases. In practical terms this means we should not be removing those who satisfy a category from 4.1 to 5 below.

3. Background

- 3.1 On 16 June 2005 the Court of Appeal, in the case of Bakhtear Rashid [EWCA/Civ/2005/744] ruled that Rashid should be granted Indefinite Leave to Remain (ILR) because of a series of errors made in the processing of his asylum application.
- 3.2 Rashid, an Iraqi national, was refused asylum in December 2001 and his appeal was dismissed. However, it was subsequently discovered that the refusal was based on the possibility of him avoiding mistreatment by relocating from central to northern Iraq, whereas IND's policy from 1 October 2000 to 20 March 2003 (when all Iraqi decision making was suspended) was not to rely on such relocation.
- 3.3 Following the Court of Appeal judgement in the case of Rashid detailed further investigations into the history of the policy regarding relocation in Iraq were made. The position is confirmed that even before October 2000 (referred to in Rashid as the start of the policy) IND policy was not to advance internal flight to the Kurdish Autonomous Zone ("KAZ") from the government controlled area of Iraq ("GCI") as a reason to refuse asylum; and that the policy

had in fact been in place since the KAZ was established following the United Nations Security Council Resolution 688 of 5 April 1991.

- 3.4** The cases of *R (A): (H) & (AH)* [2006] EWHC 526 (Admin) were heard at the High Court on 7 and 8 March 2006 to clarify the scope of the *Rashid* judgment. Mr Justice Collins found that *R (A): and (H)* fell into the same category as *Rashid* and ought to be granted ILR accordingly.
- 3.5** However in the case of *(AH)* internal relocation to KAZ was not the basis of the refusal. *(AH)* was refused asylum as not credible. *(AH)* was granted 6 months' Exceptional Leave to Remain (ELR), following reconsideration of a previously withdrawn flawed decision. At the time of the initial decision *(AH)* should have received 4 years' ELR in line with the normal IND practice for claims from GCI Iraq at that time. The court held that *(AH)* should now be able to apply for ILR as though he had been in receipt of 4 years' ELR.
- 3.6** Although there was no country specific blanket ELR policy it was accepted practice that all asylum seekers who were accepted as being Iraqi nationals, but who were found not to be refugees, from April 1991 to 20 October 2000, would be granted 4 years' ELR arising from factors such as the severe penalties imposed on those who had left Iraq illegally. From 20 October 2000, in light of the improved conditions in KAZ, only claimants who were accepted to have come from GCI were granted 4 years' ELR. On 20 February 2003 this changed to 6 months' ELR in view of the uncertain situation surrounding Iraq, in particular the prospect of imminent military action against Iraq. On 20 March 2003 initial consideration of all Iraqi asylum applications was suspended following the commencement of military action in Iraq. Decision-making on Iraqi asylum claims resumed on 16 June 2003, since when all Iraqi asylum applications, regardless of where the claimant originated, have been considered on their individual merits.

4. Scope of *Rashid* judgment and High Court judgment in *R (A): (H) & (AH)*

- 4.1** For an individual claimant to fall within the scope of the judgment on *Rashid* and the cases of *R (A): and (H)*, his application for asylum would need to:
- (a) have been refused by the Secretary of State between April 1991 and 20 March 2003 (when the policy of not advancing internal relocation to the former Kurdish Autonomous Zone (KAZ) as a reason for refusing asylum was in operation), or dismissed on appeal following a substantive appeal hearing held between those dates, and
 - (b) involve a claimant from the part of Iraq formerly controlled by Saddam Hussein who was accepted by the Secretary of State, or on appeal, to have a well founded fear of persecution in that area at the date of decision, and
 - (c) the reasons that asylum and/or ELR was refused (whether by the Secretary of State or on appeal) was that the appellant could internally relocate to the KAZ.
- 4.2** Iraqis from the former KAZ could also potentially fall within the scope of the *Rashid* judgment if a policy on internal flight was not adhered to. These cases would be where:
- a claimant's application for asylum had been refused by the Secretary of State between 23 October 2002 and 20 February 2003, or dismissed on appeal following a substantive appeal hearing held between those dates,, and
 - it was accepted that the claimant had a well founded fear of persecution, but the claimant was refused asylum and/or ELR (whether by the Secretary of State or on appeal) on the basis of the availability of internal flight from a PUK territory to a KDP territory (or vice versa) within the KAZ.
- 4.3** This was due to the appeal case of *Maghdeed* which relied on the "*Gardi*" point – that is that the area of KAZ is not a State and therefore cannot provide State-like protection.
- 4.4** For an individual to fall within the scope of *(AH)* the claimant would need to

- a) have been refused asylum but to have been accepted to be an Iraqi national (from any area of Iraq) by the Secretary of State between April 1991 and 20 October 2000 (when the practice was to grant 4 years' ELR to all claimants who had established themselves to be Iraqis but who had been unable to establish a valid claim under the refugee convention), or to have been refused asylum but accepted to have been an Iraqi national following an appeal hearing held between those dates, and
- b) have not been granted 4 years' ELR

4.5 Alternatively, the claimant would need to:

- I. have been refused asylum but to have been accepted to be an Iraqi national from the government controlled area of Iraq (GCI) by the Secretary of State between April 1991 and 20 February 2003 (when the practice was to grant 4 years' ELR to all claimants who had established themselves to be Iraqi nationals from GCI but who had been unable to establish a valid claim under the refugee convention), or to have been refused asylum but accepted to have been an Iraqi national from GCI following an appeal hearing held between those dates, and
- II. have not been granted 4 years' ELR

5. Non-compliance decisions

- 5.1** Any claim that was refused on non-compliance grounds between April 1991 and 20 October 2000 for Iraqis from all areas of Iraq or between April 1991 and 20 February 2003 for Iraqis from GCI where nationality was not disputed should have been granted 4 years' ELR and will now be entitled to be granted ILR, dependent on security checks. Based on the High Court decision in *(AH)* if a claimant's initial non-compliance decision was flawed and later withdrawn, nationality was not disputed and 4 years ELR was not granted, the claimant will now be entitled to be granted ILR, dependent on security checks.
- 5.2** Any claim that was refused on non-compliance grounds between April 1991 and 20 October 2000 for Iraqis from all areas of Iraq or between April 1991 and 20 February 2003 for Iraqis from GCI where nationality was disputed in the initial decision and our doubts about nationality maintained on appeal (at the date of appeal hearing) should not have been granted 4 years' ELR and will not now be entitled to be granted ILR.
- 5.3** However if an initial non-compliance decision was correct and nationality was disputed, but the adjudicator at appeal later accepted the appellant's nationality the claimant would now be entitled to the amount of leave, as set out in this bulletin, that was applicable at the time of that appeal. If a claimant has failed to establish his/her claim, having not provided the requisite information to make the initial decision, the claimant should not benefit on appeal from a policy in place when the initial decision was made. If a claimant's nationality is accepted on appeal and the non compliance decision was still correct the claimant is entitled to the amount of leave that was applicable at the time of the appeal, as highlighted in this bulletin from sections 4.1 to 4.5.

6. Dependents

- 6.1** Those accepted as dependents on a main applicant's claim at the time of an initial decision are now eligible for ILR. Only those dependents that would have been granted leave at the time of the initial decision, had the main applicants claim been decided in line with Home Office policy as outlined above, will now be eligible for ILR, dependent on background checks.
- 6.2** If the main applicant or their dependents have subsequently had children, evidence of the relationship, such as birth certificates and travel documents, will be required to establish the relationship before any consideration to grant in line with the main applicant.
- 6.3** If the claimant was entitled to 4 years ELR at the time of the initial decision, and that 4 years ELR has not yet expired when the case is being reconsidered (there may be some cases not due for ILR until February 2007), the claimant would still be eligible for ILR, dependent on security checks.

7. Unaccompanied Asylum Seeking Children

- 7.1** If at the time of the initial decision an unaccompanied asylum seeking child fell into a policy as outlined in this bulletin he/she will now be eligible for ILR. If the unaccompanied asylum seeking child received ELR until their 18th Birthday, but he/she was entitled to 4 years' ELR at the time of the initial decision, in line with the policy, he/she will now be eligible for ILR, dependent on security checks.

8. Background Checks

- 8.1** Background security checks are to be carried out on each applicant and eligible dependents prior to any grant of ILR. The policy as set out in this Bulletin will not apply to any person who falls within the categories outlined below. In that regard case owners should note that there is a difference between situations where a person would fall to be granted ILR through being a refugee within the terms of the 1951 UN Convention and a person who would fall to be granted ILR following the grant of 4 years ELR. For the former, the relevant consideration is whether a person falls with the Refugee Convention exclusion criteria (Articles 1F or 33(2)). Where the ILR would flow from 4 years ELR a lower threshold of criminality would exclude the claimant from being granted ILR.

ILR *Rashid* and *R (A): and (H)*

- 8.2** Those claimants who fall within the cases of *Rashid*, *R (A): and H* should undergo security checks using the following guidance:
- 8.3** Article 1F applies to persons who are not considered to be deserving of international protection and excludes some asylum seekers from the protection of the 1951 Convention. The provisions of the Refugee Convention shall not apply to any person with respect to whom there are serious reasons for considering that he/she has:
- committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
 - committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
 - been guilty of acts contrary to the purposes and principles of the United Nations.
- 8.4** Article 33(2) of the 1951 Convention takes away the key protection afforded to refugees by the principle of non-refoulement. It provides that in some circumstances persons can be removed to another country, even though they may have a well-founded fear of persecution there.
- 8.5** Under Article 33(2) enforced removal is permitted if the individual either constitutes a danger to the security of the UK; or has been convicted of a particularly serious crime and is a danger to the community.
- 8.6** Consideration of the national security ground for applying 33(2) is most likely to arise in connection with people suspected of being involved in terrorism. Where case owners encounter a case which may fall within the scope of this limb of 33(2) they should contact senior caseworkers for further guidance.
- 8.7** Where an individual has been convicted of a particularly serious crime section 72 of the Nationality, Immigration and Asylum Act 2002 will be relevant. Section 72 provides an interpretation of the second limb of Article 33(2) and sets out what constitutes a 'particularly serious crime':
- a crime for which a custodial sentence of at least two years has been imposed in the United Kingdom, or equivalent offence overseas, or
 - a crime which is listed in the section 72 offences order/ an offence committed outside the UK similar to an offence in the order

- 8.8** For further guidance on the application of Article 1F or 33(2) may apply case owners should consult the Asylum Instruction on “*Exclusion: Articles 1F and 33(2) of the Refugee Convention*”.

ILR (AH)

- 8.9** Claimants who fall the case of (AH) (ie those who are now eligible for ILR as though they had completed 4 years ELR) will be subject to the usual background checks and should be treated within the general approach for such cases. Case owners should consult the Asylum Instruction “*Exceptional Leave to Remain: Circumstances in which it will not be appropriate to grant settlement*” for detailed guidance. In practice this means that claimants who would otherwise fall within the terms of (AH) could be excluded from the benefits of this policy if they also come within the criteria for considering deportation. This includes where the individual concerned has been convicted of a “serious crime” for which the person was sentenced to 12 months imprisonment or more either in one sentence, or as an aggregate of 2 or more sentences over a period of 5 years or there has been a court recommendation for deportation).

Dependants

- 8.10** If a principal applicant falls within these exclusions he/she and any dependents will not qualify for any grant of leave as specified in this Bulletin. In addition if a dependent on his/her own merits falls within these exclusions then that individual dependent will not qualify for any grant of leave specified in this Bulletin.

9. Action to be taken on Iraqi cases decided between April 1991 and 20 March 2003.

- 9.1** When working on a file of an Iraqi national, where the asylum decision was made between the above dates, all IND staff need to check the details of the claimants case against the above criteria to identify whether the case falls within the scope of the *Rashid* judgment and/or the cases of *R (A): (H) & (AH)*.
- 9.2** If the case is found to fall outside the scope of the *Rashid* judgment and/or *R (A): (H) & (AH)*, or the exclusions apply, any representations should be rejected using the letter at Annex A.
- 9.3** If the case is found to fall within the scope of the *Rashid* judgment and/or *R (A): (H) & (AH)*, i.e. 4.1 (a) to (c) or 4.4 (a) to (b) or 4.5 I to II is met then ILR (not refugee status) should be granted. However, if there is a fresh asylum claim that must also be decided on its merits.

10. Family Reunion

- 10.1** If it is accepted that a claimant falls into the scope of *Rashid* and *R (A): (H)* the claimant should be able to apply for family reunion as in the case of *R (A)* without the requirements of maintenance and accommodation, in line with the current refugee family reunion policy.
- 10.2** If it is accepted that a claimant falls into the scope of (AH) the requirements of maintenance and accommodation would still need to be met in a family reunion application.

11. Implementing grants of ILR

- 11.1** If a case falls into the scope of the *Rashid* judgment and/or *R (A): (H) & (AH)* the file should be sent, with a clear minute outlining the reasons why the case is thought to fall into the categories, to Case Resolution Directorate for further consideration.

ANNEX A

STANDARD PARAGRAPHS

Select either Option A or Option B

Option A: Basic criteria not met

Introduction

Thank you for your letter of [date] [with enclosures] about [Mr/Ms XX] of [address] who has been refused asylum in the United Kingdom.

[Give a brief summary of the case.]

For representations on the internal relocation argument raised in Rashid and/or R (A): (H) & (AH) use either para 1 (Inter Iraq relocation) or para 2 (Intra-KAZ relocation). For continued consideration under ELR policy raised in (A) (H) and (AH) follow para 1 or 2 with para 3 (ELR policy) followed by para A (ELR policy prior to 20 Oct 2000) para B (ELR policy between April 1991 and 20 February 2003 in respect of applicants from GCI) or para C (ELR policy from 20 February 2003 until 20 March 2003 in respect of applicants from GCI) and then concluding paragraph.

For representations that fall to be excluded use para X.

Para 1 (Inter Iraq relocation) Mr/Ms XX has requested that [he/she is granted indefinite leave to remain in the UK/ their case is reviewed] in the light of the Court of Appeal judgment in the case of *Bakhtear Rashid* and/or the High Court cases of *R (A): (H) & (AH)*. The issues raised in your letter (and enclosures) have been carefully considered and it is not accepted that Mr/Ms XX's asylum claim

- was decided by the Secretary of State between April 1991 and 20th March 2003, and
- that s/he was from the part of Iraq formerly controlled by Saddam Hussein and
- that it was accepted by the Secretary of State that s/he had a well founded fear of persecution in that area at the date of decision, and
- that s/he was refused on the basis that s/he could have internally relocated to the Kurdish Autonomous Zone.

Then state which criteria the applicant meets and which s/he does not.

Para 2 (Intra- KAZ relocation) Mr/Ms XX has requested that [he/she is granted indefinite leave to remain in the UK/ his/her case is reviewed] in the light of the Court of Appeal judgment in the case of *Bakhtear Rashid* and/or the High Court cases of *R (A): (H) & (AH)*. The issues raised in your letter (and enclosures) have been carefully considered and it is not accepted that Mr/Ms XX's asylum claim **was decided/had an appeal heard or determined** between 23 Oct 2002 and 20 February 2003, was accepted as having a well founded fear of persecution and the refusal decision relied on an argument of internal flight from a PUK territory to a KDP territory (or vice versa) within the KAZ.

Para 3 (ELR policy) Mr/Ms XX has also requested that [he/she is granted indefinite leave to remain in the UK/ their case is reviewed] in the light of the Court of Appeal judgment in the case of the High Court cases of *R (A): (H)* & *(AH)*. The issues raised in your letter (and enclosures) have been carefully considered and it is also not accepted that Mr/Ms XX's asylum claim:
Then follow with either Para A, B or C depending on the individual circumstances of the claim.

Para A (ELR policy prior to 20 Oct 2000)

- was decided by the Secretary of State or on appeal between April 1991 and 12 October 2000 and
- that s/he was accepted as being from Iraq, and
- that s/he was found to have no well founded fear of persecution for a convention reason, and
- that s/he was not granted 4 years' ELR

Then state the criteria that the applicant meets and which s/he does not. Identify whether any original non-compliance decision was correct and the reasons for it.

OR

Para B (ELR policy between April 1991 and 20 February 2003 in respect of applicants from GCI)

- was decided by the Secretary of State or on appeal between April 1991 and 20 February 2003 and
- that s/he was accepted as being from the part of Iraq formerly controlled by Saddam Hussein and
- that s/he was found to have no well founded fear of persecution for a convention reason, and
- that s/he was not granted 4 years' ELR
- Then state the criteria that the applicant meets and which s/he does not. Identify whether any original non-compliance decision was correct and the reasons for it.

OR

Para C (ELR policy from 20 February 2003 until 20 March 2003 in respect of applicants from GCI)

- was decided by the Secretary of State or on appeal between 20 February 2003 and 20 March 2003 and
- that s/he was accepted as being from the part of Iraq formerly controlled by Saddam Hussein and
- that s/he was found to have no well founded fear of persecution for a convention reason, and
- that s/he was not granted 6 months ELR, and
- that a grant of 6 months' leave would allow for an application to extend that leave to ILR

As the grant of ELR would have been for a 6 month period the applicant would not have been in a position to automatically apply for an extension to ILR.

Concluding para It is therefore not accepted that the circumstances of **Mr/Ms XX's** case brings it within the scope of the Court of Appeal judgment in the case of *Bakhtear Rashid* **and/or** the High Court cases of *R (A): (H)* & *(AH)* consequently, we do not consider there is an obligation to grant indefinite (or any) leave to remain to **Mr/Ms XX**

Para X (exclusion)

You have/your client has has requested that **[he/she is /you are granted indefinite leave to remain in the UK/ their/your case is reviewed]** in the light of the Court of Appeal judgment in the case of *Bakhtear Rashid* **and/or** the High Court cases of *R (A): (H)* & *(AH)*. The issues raised in your letter **(and enclosures)** have been carefully considered however it has been concluded that **you/your client** does not qualify for indefinite leave to remain because:

[Case owners should then use the following option(s) which ever is relevant to the particular case .]

- a) There are serious reasons for considering **you/your client** has committed a crime against peace, a war crime, or a crime against humanity.
- b) There are serious reasons for considering **you/your client** has committed a serious non-political crime outside the UK.
- c) There are serious reasons for considering **you/your client** is guilty of acts contrary to the purpose and principles of the United Nations.
- d) **[Rashid-type cases only]** Having been convicted by a final judgment of a particularly serious crime, **you are/your client is** a danger to the community of the UK **[Note: Case owners can only refuse on this basis if the individual is first given the opportunity to rebut the presumption he is a danger to the community]**
- e) **[AH-type cases only]** **You have/your client has** been found to meet the criminality threshold currently applied for considering deportation.
- f) **Your/Your client's** presence in the UK is deemed non-conducive to the public good in light of your character, conduct or associations or the fact that **you/your client** represent[s] a threat to national security

A "particularly serious crime" for the purposes of (d) above is:

- one for which a custodial sentence of at least two years has been imposed in the United Kingdom; or an equivalent offence overseas; or an offence which is listed in an order made under section 72 of the Nationality, Immigration and Asylum Act 2002.

For the purposes of (e) above, ILR will not be granted under the current CCD deportation criteria when the individual:

- has a custodial sentence of 12 months or more in one sentence;
- has two or three custodial sentences which cumulatively amount to 12 or more months over a period of 5 years (the 5 years count backwards from the date of the last conviction); and / or

- the court has recommended that an individual should be deported on completion of their sentence.

[Include details of conviction/s]

It is therefore not accepted that the circumstances of **your/your client's** case brings it within the scope of the Court of Appeal judgment in the case of *Bakhtear Rashid* **and/or** the High Court cases of *R (A): (H)* & *(AH)* consequently, we do not consider there is an obligation to grant indefinite (or any) leave to remain to **your/your client**

Option B

Criteria has been met

Thank you for your letter of **[date]** **[with enclosures]** about **[Mr/Ms XX]** of **[address]** who has been refused asylum in the United Kingdom.

Mr/Ms XX has requested that **[he/she is granted indefinite leave to remain the UK/ his/her case is reviewed]** in the light of the Court of Appeal judgment in the case of *Bakhtear Rashid* and the High Court cases of *R (A): (H)* & *(AH)*. We have reviewed **Mr/Ms XX's** case on that basis and have decided that in this case it would be appropriate to grant ILR for **Mr/Ms XX**.

ANNEX B

IRAQ MAPS

Maps of Iraq Governorates, Districts and cities are available on the United Nations Assistance Mission for Iraq (UNAMI) website at:

http://www.uniraq.org/docsmaps/maps_geographic.asp?pagename=maps_geographic