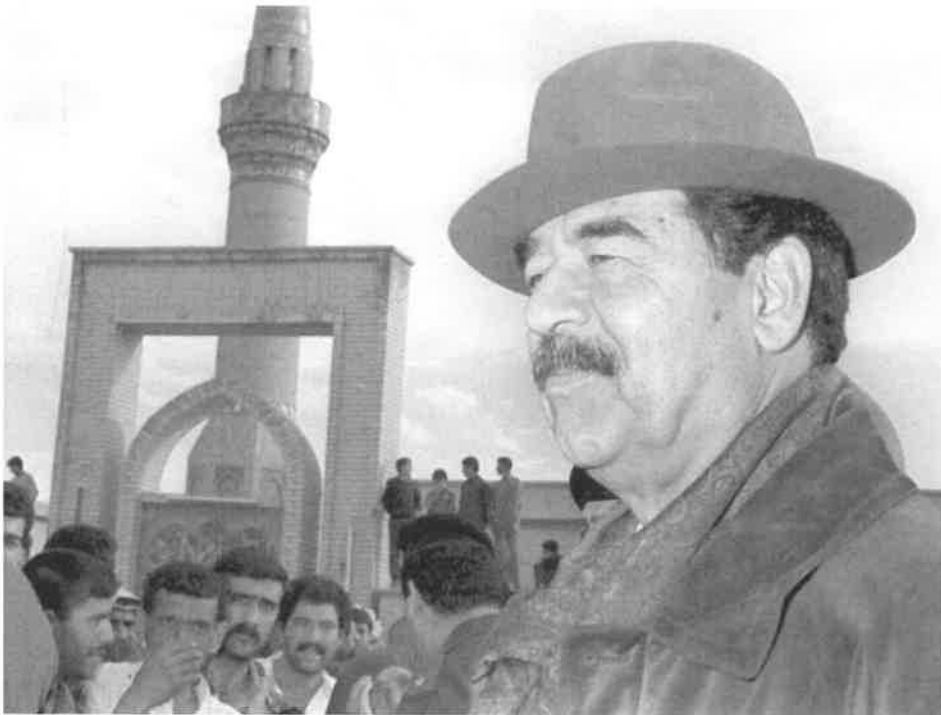


Canadian Federal Court overturns denial of permanent residence to former Iraqi government official

It raises a question about how officials should determine whether someone is too high up in a regime engaged in human rights abuses to be admitted to Canada



Former Iraqi dictator Saddam Hussein in 1998, which is during the time period that Zaghlol Kassab worked in the country's civil service. INA/AFP/Getty Images



MAURA FORREST

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government official under Saddam Hussein's regime, in a case that could have larger implications for how Canada decides whether to accept refugees with ties to dictatorships.

Judge Michael Manson found the visa officer ignored evidence suggesting Zaghlol Kassab had little real power within the regime, and ordered that his application for permanent residence be reassessed by a new officer.

But the judge also raised a broader question about how Canadian officials should determine whether someone is too high up in a regime engaged in human rights abuses to be admitted to Canada as a refugee, which must now be answered by the Federal Court of Appeal.

Sergio Karas, an immigration lawyer and analyst not involved with the case, said he thinks the issue could end up before the Supreme Court of Canada. He said there's currently not enough guidance for visa officers tasked with deciding which government positions are too senior to be admissible to Canada.

"I would like to see the court provide the specific elements and specific factors that you have to look at to make that determination," he said. "The officers need guidance, so... people can hold their feet to the fire."

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Kassab, 72, is an Iraqi engineer who spent the majority of his career working in the Iraqi civil service. Between 1988 and 2000, he worked in several positions, including in the Iraqi Atomic Energy Commission and the Ministry of Industry and Minerals, before retiring early in 2000. Max Chaudhary, his Toronto-based immigration lawyer, said a lot of his work related to the country's electricity grid.

Kassab started an engineering consulting business after his retirement from the government. He and his family moved to Jordan in 2004, and he then split his time between Iraq, Jordan and the



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instances of religious persecution while living in Iraq." Kassab moved to Jordan more permanently in 2014, after an incident "where armed men threatened death if he attended his church," the decision says.

Kassab, his wife and two of his daughters later applied for permanent residence in Canada as sponsored refugees. The court decision says he was interviewed by a visa officer in February 2016, who found he met the definition of a refugee under the United Nations refugee convention, but reserved his decision pending the results of an investigation into Kassab's employment under the dictatorship of Saddam Hussein, president of Iraq from 1979 until 2003.

In the meantime, Kassab's wife and two daughters were granted permanent residence in Canada.

In the spring of 2018, Kassab's application was denied over concerns about his role in the Iraqi government. According to Canadian refugee law, foreign nationals are inadmissible to Canada if they were senior officials in a government that engaged in terrorism, human rights violations, genocide or war crimes. In a letter declaring Kassab inadmissible, a visa officer wrote that Canada considers Hussein's government to be a regime that engaged in serious human rights abuses.

Kassab insisted he had been excluded from senior positions because of his religious beliefs, and was not a member of the ruling Ba'ath Party. "Based on his religious persuasion, he didn't have substantive input into the policies of the government," Chaudhary said.

But notes on Kassab's file quoted in the court ruling show that visa officers felt those arguments were irrelevant. "Although he may not have reached the upper echelons of the Iraqi public service, one can still reasonably conclude that his roles are indicative of being a senior official in the top 50 per cent of Iraqi government public service hierarchy during a designated regime period," they say.

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The refusal of Kassab's application was based on use of the "top half test," which determined that he was a senior official because he was in the top half of the Iraqi government hierarchy. A similar test has



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that test in the case of government officials.

"Given that a civil hierarchy may be less structured than a military hierarchy, when considering whether a civil appointment constitutes a senior member of the public service, a more fulsome examination should be done," the judge wrote.

"It's really difficult in a bureaucratic setting to make that determination, unlike in a military setting where responsibilities are really demarcated in quite explicit terms," Chaudhary said in an interview.

The judge found the visa officer should have considered the "highly relevant evidence" suggesting Kassab did not wield meaningful influence, and ordered that his case be reconsidered.

However, it will now be up to the Federal Court of Appeal to decide what factors visa officers must take into consideration when assessing such cases.

"When significant evidence is put forward that the individual was unable to exert significant influence or benefit from their position, can an officer conclude that an individual is a senior member of the public service solely on the basis that the individual is within the top half of the government hierarchy, or is the officer required to conduct a broader analysis and consider such evidence?" the judge asked in his decision.

Karas said the answer to that question will have "far-reaching consequences" in terms of who can be declared inadmissible based on ties to regimes. "How high do you have to be in order to be a senior member. ... How much power do you have to have?" he said. "That's the question that has to be answered."

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