



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: UI-2021-001716
IA/03961/2021

THE IMMIGRATION ACTS

**Heard at Field House
On 2nd September 2022**

**Decision & Reasons Promulgated
On 14th October 2022**

Before

UPPER TRIBUNAL JUDGE KEITH

Between

**AM (IRAQ)
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure
(Upper Tribunal) Rules 2008**

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court. The reason for this order is that the appeal relates to a protection claim.

Representation:

For the appellant: Mr K Gayle, instructed by Elder Rahimi Solicitors
For the respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. These are the approved record of the decision and reasons which I gave orally at the end of the hearing on 2nd September 2022. I pay tribute at the beginning of these reasons to the legal representatives' submissions, which were concise, but relevant and assisted me in my decision.
2. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Borsada (the 'FtT'), dated 23rd November 2021, by which he dismissed the appellant's appeal against the respondent's refusal on 31st March 2021 of his protection and human rights claims.
3. In essence, the appellant's claims involved the following issues. A previous asylum claim had been refused. The appellant's earlier appeal to the First-tier Tribunal (Judge Pacey) was dismissed on 25th January 2018. The appellant, an Iraqi national of Kurdish ethnic origin, made further submissions on 27th November 2019, which were the subject of the FtT's decision under appeal. The appellant claimed to have recently converted to Christianity from Islam and feared persecution in Iraq. The appellant had previously claimed to fear persecution on the basis of a claimed relationship with a Christian woman, of which his family disapproved; and potential adverse interest from the KDP and PUK in the Kurdish -controlled area of Iraq ('IKR'), as his maternal uncle was a high-ranking member of the PUK and was in a position to carry out honour-based violence against the appellant. The previous FtT had not accepted the appellant's general credibility. Nevertheless, the respondent accepted the appellant's claim of conversion to Christianity in the UK to be genuine but did not accept that he would face adverse interest either from state actors in the IKR or from non-state actors, including his family. The respondent also did not accept that the appellant intended to proselytise as an evangelical Christian. Finally, the respondent rejected the appellant's claim by reference to sufficiency of protection and availability of internal relocation, albeit both referred to the absence of adverse interest.

The FtT's decision

4. The FtT considered the claimed fear of persecution set out in the refusal decision and also the estrangement between the appellant and his family members which meant that he had no way of obtaining a registration document or CSID. In that context, the country guidance case of SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC) was relevant.
5. The FtT concluded, at §2, that there was no evidence in addition to that which the earlier First-tier Tribunal had previously considered in relation to the claimed relationship with a Christian woman, or claims regarding fear of persecution by the KDP or PUK. The FtT was also not satisfied that he was estranged from his family for that reason.

6. Whilst at §3, the FtT noted the respondent's concession that the appellant was a Christian convert, but it did not follow that he would be ostracised by his family or that he would suffer persecution as a result. He came from a relatively prosperous background, with a high social status in an urban area.
7. At §5, the FtT rejected the appellant's claim to be an evangelical who would proselytise.
8. In relation to the issue of an INID card or a CSID card, the appellant had not established that the local registration office could not issue the old-style CSID or that his family would be unable to help him. At §7, the FtT rejected the appellant's claim that he did not have his ID documents. He could also obtain his "1957 Registration Document" with the help of his family.

The grounds of appeal and grant of permission

9. The appellant lodged grounds of appeal which are essentially as follows:
 - 9.1. Ground (1) -the FtT had erred in drawing adverse credibility findings, based the absence of corroborative evidence since the previous FtT hearing. However, the appellant did provide evidence from the Red Cross of his attempts to make tracing enquiries.
 - 9.2. Ground (2) - the FtT had referred at §8(3) to accepting the appellant's religious conversion because of independently verifiable evidence (namely the evidence of a Christian priest). It was therefore implicit that the FtT was requiring independently verifiable evidence in respect of other aspects of the appellant's claim. Independent verification was not required for a protection claim.
 - 9.3. Ground (3) - the FtT erred in concluding that the appellant would not proselytise in Iraq and would not, as a consequence, face adverse interest. This ignored that he had faced adverse interest from members of the Kurdish community in the UK. Specifically, a Christian priest giving witness evidence in support of the appellant had stated that the appellant had been shunned by members of the Kurdish diaspora community in the UK and also that the appellant did tell others of his faith. The FtT's findings were therefore contrary to the evidence.
10. First-tier Tribunal Judge Curtis granted permission on 5th January 2022. The grant of permission was not limited in its scope.

The hearing before me

Discussion and conclusions

11. I do not recite in full the respective representatives' submissions except where it is necessary to explain my reasons for rejecting or accepting a

contested submission. I remind myself that it is not for me to substitute what I would have decided in the appellant's case and I am also very conscious of what is sometimes referred to as "island hopping" between particular aspects of evidence, as recently referred to by the Court of Appeal in the decision of Volpi & Anor v Volpi [2022] EWCA Civ 464.

Ground (1)

12. Mr Gayle had submitted that the appellant's further submissions were an entirely new claim on a new set of facts. He asserted that the previous claim had been on the basis of a claimed relationship and estrangement from family members, which an earlier First-tier Tribunal had rejected, whereas here, the risk related to the appellant's accepted conversion to Christianity.
13. I accept Mr Clarke's response that Mr Gayle's submission is not sustainable on the case as described before the FtT. In particular, at §7, the FtT recorded these submissions as included the following, §7(i):

"The appellant in his most recent witness statements ...indicated that whereas the Tribunal had rejected his previous claim **he continued to claim [my emphasis]** that he had been truthful in his account and that his life was in danger on his return. ... The appellant indicated that he had asked for assistance in finding his girlfriend [name omitted] but there was no information available and he did not even know (sic) if she had had the baby they were expecting when he left the country."

§7(ii) continues:

"It was in these difficult circumstances that the appellant had turned to Christianity as a source of emotional and psychological comfort."

I do not recite the remainder of §7(ii) but instead refer next to §7(iii):

"...The appellant was concerned that the respondent had confused the position in Iraq regarding the treatment of people belonging to minority Christian communities and his likely treatment as a Christian convert which was considered blasphemous. The fear of dishonour caused by conversion on the part of his family was likely to be even greater now than the dishonour caused by his decision to enter into a relationship with a Christian woman. The appellant feared both his immediate family and his extended family."

§7(v) continues:

"...The appellant had no contact with his family and having been estranged from his family because of his relationship with a Christian woman he could not approach them in any event. It followed that it was effectively be impossible [sic] for him to obtain his CSID or a new INID in any circumstances."

14. I am satisfied in that context that, as Mr Clarke contends, the further submissions were not self-contained, but built on the previous submissions and the claim which had been considered in detail by Judge Pacey. That was relevant because a number of these findings interlinked with the current risk factors. These included, for example, the appellant's possession of identity documents or his ability to obtain an INID; and whether he was estranged from family members because of religious conversion.
15. I further accept Mr Clarke's submission, in relation to AS and AA (Effect of previous linked determination) Somalia [2006] UKAIT, that the passage relied on by Mr Gayle (§66) as authority for the proposition that there was no reason to give Judge Pacey's decision evidential value to the case now under consideration, ignores §§61 and 62 of AS and AA, that a decision-maker considering a second claim to which a person involved in earlier proceedings was a party, should no doubt have regard to the previous judgment, but that that principle did not apply necessarily to a second appeal where the parties were different. The parties here were not different. Judge Pacey's decision was not binding or a straightjacket, but if there was no good reason for departing from it, it must, as between the parties to that litigation, be treated as settling the issues with which it was concerned and the facts on which her determination was based. I accept that there is the additional factor of religious conversion, but I also accept Mr Clarke's submission that the appellant's case was one where the principles of Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka * [2002] UKIAT 00702 were applicable. It was not a case of two entirely separable claims. It was not also not a case that the FtT had fallen into the "Mibanga" error (see: Mibanga v SSHD [2005] EWCA Civ 367) of disregarding the appellant's further submissions because Judge Pacey had not regarded him as being credible in his earlier claims. Rather, the FtT had referred to what additional evidence the appellant was now relying on, or was potentially available and had still not been adduced.
16. Mr Gayle rhetorically asked how the appellant could prove the breakdown in his relationship with family members, such that he did not have, nor could he get, an INID document? In simple terms, he submitted that it was not possible to prove a negative. However, I accept once again Mr Clarke's submission on the point that the starting point was Judge Pacey's decision. When assessing the appellant's credibility, Judge Pacey had considered not only internal inconsistencies in the appellant's account, but the late production of a witness statement from a friend in Iraq, without evidence such as a chain email as to how it had been received (§§67 to 69 of Judge Pacey's decision), which I discussed with Mr Gayle, as one example.
17. Similarly, with regard to the Red Cross tracing enquiries, whilst Mr Gayle invited me to consider that it was common for the Red Cross not to respond to tracing enquiries, once again, I regard that it was open to the FtT to note the evidence that the appellant had adduced of booking an

tracing interview, but no evidence of him progressing the tracing enquiry any further (see: §§6(v), relating to the respondent's submissions).

18. In summary, the FtT did not impermissibly impose a requirement of corroboration. He took Judge Pacey's decision as his starting point, considered what new evidence there was and how the appellant's circumstances had changed, and whether there was evidence that could have been adduced, but had not been (such as already identified by Judge Pacey).
19. Ground (1) discloses no error of law is dismissed.

Ground (2)

20. Elements of ground (2) repeat arguments raised in ground (1). Mr Gayle focussed his submissions in relation to ground (2) on §§8.2 and 8.3. I cite these passages in full.

“8.2 With regard to the claim that the appellant originally made about the fear of his family in to Iraq: I have been provided with no further evidence about this and therefore I have no good reasons for departing from the findings of fact of the previous Tribunal Judge. I do not therefore accept that the claims the appellant has made about his forbidden relationship with a Christian woman or the claims regarding the fear of the KDP on account of his brother's detention in 2011 and/or the claims regarding his maternal uncle being a powerful member of the PUK. The appellant has not established that he is at risk from his family on account of his claimed relationship with [name omitted] and I am also not satisfied that he is estranged from his family for this reason.

8.3. I note that it has however been accepted by the respondent that the appellant is a Christian convert. I too note the oral evidence of Brother [name omitted] as well as the documentary evidence from the Church that this is a genuine conversion. It does not however follow that what the appellant has stated about any of the other matters are true. For instance, I do not accept that the appellant has established that his family would ostracize him on return on account of his religious conversion and/or that they would consider that he has dishonoured the family for this reason. In reaching this conclusion I rely on the previous Tribunal's findings about the lack of credible evidence provided by the appellant who in my view cannot be regarded a witness of truth. The only reason why I have accepted that he is a Christian convert is that there is independently verifiable evidence provided about this including very good oral evidence from Brother [name omitted].”

21. I accept Mr Clarke's submission that the reasoning in §8.2 was open to the FtT. The appellant had provided no further evidence about his fear of his family in Iraq and there was no good reason for departing from Judge Pacey's findings. The FtT was not requiring corroboration, rather, he was applying Devaseelan. That was also true of the FtT's reference to only accepting that the appellant was a Christian convert because of the evidence of the Christian priest. That was specifically in the context of Judge Pacey's adverse credibility findings.
22. Mr Gayle raised a separate aspect in relation to ground (2), whether the FtT had erred at §8.9 in finding that the appellant had failed to provide evidence that he would not be able to obtain identity documents to facilitate his return to Iraq. When it was queried whether this was in the grounds that had been permitted to proceed, Mr Gayle relied on §21 of them, which had argued that it was unclear how the FtT had expected the appellant to be able to prove this aspect of his account and it was unreasonable to expect the appellant to prove a negative. However, this is, in my view, linked to the ground (1) and the absence of evidence that could have been adduced but had not, as highlighted by Judge Pacey in her decision, and where she had made findings that the appellant's relationship with his family had not broken down, as claimed.
23. As Mr Clarke pointed out, the FtT had made specific findings that the appellant had access to his original ID document as well as an ongoing relationship with his family. I accept that that was a finding that was open to the FtT, on the evidence before him. That aspect of ground (2) discloses no error of law.
24. Ground (2) is dismissed.

Ground (3)

25. I turn to whether the FtT erred in his application of the principles of HJ (Iran) and HT (Cameroon) v SSHD [2010] UKSC 31.
26. In measured submissions, Mr Gayle accepted that the FtT referred to both parties' submissions on the point and at §6(iii), the FtT considered in detail the respondent's consideration of Country Policy and Information Note: religious minorities ("CPIN") October 2019 and the updated report in July 2021.
27. The country evidence had noted that there were some problems for religious converts in the IKR, but stated that members of religious minorities in general did not face a risk of persecution, albeit that each case needed to be considered on its own facts, the potential problem being the risk not from the state but from non-state actors. The respondent's case had been that the fact-sensitive nature of that enquiry referred to family members and individuals living in rural areas.

28. The FtT had also considered the respondent's consideration of "EASO" Guidance of June 2019 about the risk to religious converts, but the evidence discussed the risk from extended family members and the community, rather than immediate family members. Social status was also said to be a determining factor in the risk of persecution, including a person's tribal background, as Kurdish "tribes" were on the whole more "permissive" (i.e. tolerant).
29. The FtT then went on to consider at §7(vi), the appellant's submission that much of the country evidence focussed on the lack of general risk to those who had always been Christian, as opposed to those who had converted. Open conversion, it had been argued, was likely to ostracism and/or violence at the hands of the community.
30. In that respect, I accept Mr Clarke's submission that the FtT's subsequent reasons at §§8.4 and 8.5 were adequately reasoned and disclose no errors of law:

"8(4) With regard to the likelihood that he would suffer persecution in Iraq for his religious conversion: I note all the evidence that has been supplied to me including the CPIN and EASO reports (US Department Report as well). I note that the likelihood of persecution is 'fact' dependent in cases of Christian conversion i.e. it depends on such matters as the attitude of the appellant's family, the attitude of the appellant's home community and it also depends on other matters such as the social status of the appellant including his residence (rural or urban). The appellant has provided no credible evidence about the likely attitude of either his family or his local community and to the extent that he has provided evidence about his previous circumstances in Iraq, the appellant has claimed to have been a relatively prosperous individual (the family owned and ran a bakery) with relatively high social status who lived in an urban area. Furthermore, the appellant is from an area of Iraq i.e. the IKR, where societal attitudes are known to be more liberal and more tolerant. In the absence of any evidence of a specific threat to him from a non-state agent, I see no reason for the appellant not to return to [his home area] and live there as a Christian convert and this is even allowing that not everyone in his community and possibly not everyone in his family will accept the fact of his conversion. The appellant has not shown that the kind of discrimination he might experience on his return home would amount to persecution. I note that there are some legal sanctions against apostates in Iraq but again the authorities in the IKR appear to be more tolerant than elsewhere and there is no evidence that the governance of the IKR have engaged in the persecution of individuals who have converted.

8(5) With regard to the test in **HJ (Iran)**: I agree with the respondent's representative's arguments about this. The appellant has not

demonstrated that he would not be able to live openly as a Christian convert in the IKR. He has not established that his iteration of Christianity involves evangelism. The appellant has not engaged in any forms of evangelism in this country either. Brother [name omitted] mentions the appellant's attendance at bible study meetings but was quite clear in his evidence that these were not public meetings but meetings by invitation only. Apart from that the appellant gave evidence of attending church regularly. The appellant stated that he was part of a group of Iraqi Kurds who attended their local church and who were all fellow converts. There was no evidence that the appellant had actively proselytized and there was no evidence that the appellant had been the instrument of other people's decision to convert. I did note Brother [name omitted]'s evidence that some within the Kurdish community in the UK had shunned the appellant. However, I did not consider that this was evidence of the appellant's Christian evangelism but rather was an indication of some level of societal hostility and prejudice towards people such as the appellant who were Christian converts.

31. The appellant's claim was not on the basis that any Christian converts would have a well-founded fear of persecution on return to the IKR, and the FtT was entitled to consider that an analysis was intensely fact-specific. This was by reference to family relations, social status and the like. That is exactly the analysis that FtT had conducted and adequately explained at §8(4).
32. I turn to the final aspect of the ground and the extent to which there was any error with regard to FtT's findings on proselytization. The relevant findings are at §8(5), above. They speak of a group who attend a local church, without evidence that the appellant had directly proselytised and or others had converted because of his proselytization. Having canvassed the issue with Mr Gayle, the evidence about others shunning the appellant appears to be not the evidence of the Christian priest who gave oral evidence, but a letter from a local vicar who says that the appellant suffered some rejection from the Iraqi community in the UK because of his conversion. The FtT was entitled to accept that this brief comment, which included no further detail, was not evidence of a response to the appellant's Christian evangelism, but indication of some level of social hostility because of conversation. There was not sufficient detail in that evidence on which to assume that such rejection in the UK would equate to persecution in the IKR.
33. I accept Mr Clarke's submission that there was no error by reference to Hj (Iran). I note Mr Gayle's submission that there is a distinction between on the one hand openly professing one's faith and on the other hand actively proselytising. I do not accept that the FtT confused the two. I also accept his submission that it is important not to confuse either with the issue of whether someone would be discrete, and if they would, the reason for that discretion (i.e. whether because of fear of persecution).

34. In this case, it is accepted that the appellant's faith is genuine and that he worships with other fellow converts. He was found not to be discreet to the extent that he has been rejected by some member of the Iraqi diaspora community in the UK. However, the FtT found that there was not sufficient evidence that the rejection was because of proselytising. There was no error in the FtT's reference to that distinction. It was part of the FtT's analysis of the risk that the appellant would face in his community on return to the IKR.
35. At §28 of the grounds, the appellant says that the FtT misrepresented his evidence that evangelism is a core aspect of his faith and he feels that it would be selfish not to share the benefits of his faith. This is, in essence, a perversity challenge. The FtT has adequately explained why the appellant has not evangelised and would not do so. Such a finding was open to the FtT to make on the evidence before him and is not perverse.
36. Ground (3) has no merit and is dismissed.

Decision on error of law

37. I conclude that there are no errors of law in the FtT's decision, such that it should be set aside. The appellant's challenge fails and the decision of the First-tier Tribunal shall stand.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law such that it should be set aside. The decision of the First-tier Tribunal stands.

The anonymity directions continue to apply.

Signed **J. Keith**

Date: 12th September 2022

Upper Tribunal Judge Keith