



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

Appeal Number: LP/00155/2020

THE IMMIGRATION ACTS

**Heard at Bradford
On 29 April 2022**

**Decision & Reasons Promulgated
On 14 June 2022**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

AH

(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Patel instructed by IBSA Legal Ltd.

For the Respondent: Ms Young, a Senior Home Office Presenting Officer.

DECISION AND REASONS

- 1.** The appellant appeals with permission a decision of First-tier Tribunal Judge Pickering ('the Judge') promulgated on 23 October 2020, in which the Judge dismissed the appellant's appeal on all grounds.
- 2.** Permission to appeal was refused by another judge of the First-tier Tribunal but granted by the Upper Tribunal on the basis it was said to be arguable that the Judge failed to direct herself to the parts of the CPIN expressly dealing with atheism in the KRI, as contended in the

grounds at [10] and that, although expressing the other grounds have less merit, granted permission on the same.

3. The Judges decision is challenged on five main grounds being:
 - i. That the Judge failed to consider the reasons why the Appellant had not openly portrayed he is an atheist; if it was for fear of persecution then that is clearly relevant under HJ's Iran principles;
 - ii. That the Judge failed to consider the HJ Iran point regarding whether it is right to expect the appellant to pretend he is not an atheist and to adopt Islamic behaviour to protect himself;
 - iii. That the Judge failed to consider the risk to the Appellant as an atheist and as an apostate.
 - iv. The Judge failed to properly consider the background evidence
 - v. the Judge failed to consider that the failure of the states to allow an individual to record he is an atheist clearly impacts upon that individual's right to practice his lack of religion freely and about the persecution.
4. The appellant's claim is that he has no faith and identifies as an atheist and that in 2016 he created an online game depicting Peshmerga defeating ISIS and destroying the ISIS flag. The appellant claims that the flag contains an Islamic declaration of faith as a result of which he is receiving death threats on social media and through his telephone. The Judge divides the decision into headed paragraphs, the first being whether it is reasonably likely that the appellant will experience problems due to him no longer following Islam [28 - 38], secondly whether it is reasonably likely the appellant will be a risk on return as a result of the game he created [39 - 45] and thirdly, whether the appellant could seek the protection of the authorities in Iraq and whether he could relocate within Iraq [46].
5. The Judge, who had the benefit of considering not only the documentary evidence but also of seeing and hearing the appellant gave oral evidence, sets out findings of fact from [25] of the decision under challenge.
6. At [27] the Judge writes:
 27. As there is no dispute as to the appellant's nationality, I find it as a fact that the appellant is a national of Iraq. Nor is there any dispute as to the appellant's ethnicity, therefore I find as a fact the appellant is Kurdish. Finally, it was accepted by the respondent that the appellant is an atheist. Again, I accept that fact.
7. The Judge thereafter went on to consider whether it is reasonably likely the appellant will experience problems due to him no longer following Islam between [28] and [38] concluding, having considered the background evidence, that he had not demonstrated an objectively well-founded fear due to his atheism in the IKR.
8. The Judge noted the evidence that the appellant discussed his views with his contemporaries at university in 2016 and that while some disagreed the majority shared his view. The Judge notes there was one incident where a disagreement almost became physical but did not, and the Judge accepts the account of the mixed reactions of those at the University [28].
9. At [29] - [30] the Judge writes:

29. Aside from this, on the point that the appellant no longer followed Islam, there is little to suggest that he had any problems due to his atheism more generally. The subsequent problems that the appellant says he experienced were related to the game he developed. I accept that the appellant's view of religion, at least in part informed his decision to develop the game and this is a matter I considered when assessing whether there was a reasonable degree of likelihood that the appellant developed the game.
30. Assessing the appellant's conduct in the IKR in respect of his beliefs: the appellant does not appear to have discussed his beliefs beyond his family and with his university colleagues. There is no evidence to suggest that he has done anything similar in the UK.
- 10.** The Judge notes it is not illegal to be an atheist in Iraq, noted country information highlighted conflation that can happen between atheism and blasphemy, but that examples in the EASO report did not relate to the IKR, that the reference in the country material to arrest warrants took place in central/southern Iraq as opposed to the IKR, and that the report dated 2019 confirmed there were no recent prosecutions of atheists, leading to the Judge to conclude that it did not appear there is a real risk from the government within the IKR for espousing atheist beliefs [35].
- 11.** Thereafter the Judge went on to consider whether the appellant will face a real risk on return as a result of the game he created but did not find the appellant had established any real risk on the basis of the evidence the Judge had been asked to consider.
- 12.** The Judge concluded the appellant could return to his home area and, therefore, internal relocation did not arise and that the evidence was that his CSID was at home, he was in contact with his younger brother, so he could obtain the same to enable him to travel to his home area even if returned to Bagdad. The Judge specifically records at [19] that there was no issue about the appellant being able to access documentation.

Discussion

- 13.** As noted the challenge in the grounds only concern the Judge's findings in relation to aspects of the appellant's atheism.
- 14.** The Judge specifically records at [18] the following:
18. The parties agreed that the matter is not in dispute and issues to be resolved were accurately recorded within the appeal skeleton argument (ASA) [page 16 and 17].
- 15.** The appellants skeleton argument before the First-tier Tribunal recorded the issues arising being those recorded by the Judge in the headings set out in the determination namely (a) whether the appellant will experience problems in Iraq, due to him no longer following Islam, (b) whether the Appellant will face a serious risk of harm as a result of the game he created, (c) whether the appellant

can seek protection from the authorities in Iraq and (d) whether the appellant could relocate within Iraq.

- 16.** It is recorded in the skeleton argument at [6] that the appellant did not claim to be at risk of serious harm purely because of him not following the Islamic faith. His claim was that as an atheist he would attract a serious risk of harm.
- 17.** It was accepted in the skeleton argument that the situation in the IKR can be distinguished from the remainder of Iraq, although noting the IKR is not “problem free” and asserting there was a risk of harm to individuals who leave Islam and openly proclaim their atheism [9].
- 18.** It is noted there is no issue in relation to documentation, the appellant having been able to obtain necessary documents in Iraq. There was no evidence before the Judge that requiring the appellant to satisfy the formal requirements set out by the Iraqi government to obtain such documentation interfered with or prevented the appellant from manifesting his atheist belief or amounted to a persecutory act.
- 19.** The HJ (Iran) point, namely that the appellant could not express his atheism and did not do so as a result of fear of persecution, does not appear to have been specifically pleaded or raised as an issue before the Judge.
- 20.** I am satisfied having considered the decision and the evidence available to the Judge as a whole, that the Judge clearly considered the evidence with the required degree of anxious scrutiny.
- 21.** To be granted asylum under the Refugee Convention, it was necessary for the appellant to show that he has a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership of a particular social group.
- 22.** There is a lack of a clear definition of what constitutes ‘religion’ under international law or refugee law although the Qualification Directive describes religion as a ground of persecution:

“the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief”.

- 23.** The Judge makes reference to the EASO country report for Iraq. That report dated January 2021 is in the following terms:

Atheism is not illegal in Iraq, but State actors typically equate atheism with blasphemy. Although there are not any articles in the Iraqi Penal Code that provide for a direct punishment for atheism, the desecration of religions is penalised. In March 2018, arrest warrants were issued in Dhi Qar against four Iraqis on charges of atheism. According to COI sources, no recent examples of prosecution of atheists in the KRI have been reported.

In Iraq, atheists are reportedly viewed with disdain and face threats. It is reported that persons who openly admit they are not religious would risk arrest in, for

example, Baghdad and the South, whereas in the KRI there would be more freedom of expression with regards to religious beliefs. According to COI sources, Kurds primarily identify themselves in terms of their ethnicity and not their religious affiliation.

While atheism is rare in Iraq, the number of atheists is reportedly growing. Secularism is also on the rise amongst Iraq's youth. A poll released in 2011 recorded that 67 % of Iraq's population answered that they believe in God, 21 % answered probably, whilst 7 % answered that they did not believe in God. There are many Iraqi websites and blogs that cater to atheists, but membership lists are kept secret for fear of persecution by extremist religious groups or the surrounding society.

Atheism is in general not well perceived in the KRI. However, according to some sources, it is somewhat more acceptable to be an atheist than an apostate. Criticism of religious functionaries in general is quite widespread in KRI and is not looked upon as something scandalous. Criticising Islam on social media, particularly on Facebook, has become something of a social trend in the KRI, whereas up until recently it was not acceptable. However, proclaiming oneself as an atheist publicly could cause problems. There have reportedly been cases in which atheists have been physically threatened, harassed or rejected by their families. According to COI sources, atheists who suffer harassment due to their beliefs prefer to hide than to report to the police. Although the Kurdish government is secular, society in general, especially in Erbil, is conservative and people are generally expected to respect Islamic norms.

Risk analysis

The acts to which individuals under this profile could be exposed are of such severe nature that they would amount to persecution (e.g. killing, violent attacks). When considering such applications, the case officer should take into account that it cannot reasonably be expected that an applicant will abstain from his or her religious practices in order to avoid persecution. 21 It should be noted that the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs (Article 10(1)(b) QD).

[21 CJEU, *Bundesrepublik Deutschland v Y and Z*, joined cases C-71/11 and C-99/11, judgment of 5 September 2012, para. 80.]

In the case of those perceived as apostates (e.g. for reason of conversion to Christianity or due to atheism) or blasphemers, in general, a well-founded fear of persecution would be substantiated. However, the risk assessment should take into account the religious or non-religious practices the applicant will engage in and whether those would expose him or her to a real risk, 22 also taking into account his or her home region (the risk is generally lower in the KRI), family and ethnic background, gender, etc.

See also 2.15 Religious and ethnic minorities, and stateless persons.

Nexus to a reason for persecution

Available information indicates that persecution of this profile is for reasons of religion.

- 24.** As noted above, the HJ (Iran) issue was not raised in the pleadings or orally and the appellant's evidence before the Judge was that he had openly discussed his atheist beliefs to colleagues, that there had been a limited reaction as a result, but that he had not discussed matters with family or others widely within Iraq or even in the UK. It does not appear on the evidence that the reason for this was discussed in detail

before the Judge or that there was any sufficient evidence before the Judge to warrant a finding that the appellant's actions arose as a result of a fear of persecution if he acted differently.

- 25. The Judge's finding that there was no evidence of past persecution, even though the appellant had mentioned his stance, or real risk in the future, is within the range of those available to the Judge on the evidence.
- 26. Considering whether in light of the material this was a 'Robinson obvious' point the Judge should have taken of her own motion, there being an obligation upon a decision-maker to ensure lawful application of the Refugee Convention, I do not find the same made out.
- 27. This is not a case where it was obvious on the basis of the evidence provided and facts found that the HJ (Iran) principal is engaged. On the evidence, subjective and the country material, the findings of the Judge that no risk of persecution arises in the IKR is a finding within the range of those reasonably available to the Judge. The key element missing in this appeal is the lack of evidence before the Judge that the appellant had faced a real risk of persecution in the past and that there was a real risk he would do so in the future unless he moderated his conduct by concealing his atheist beliefs.
- 28. I do not find the appellant has established the Judge has erred in law in a manner material to the decision to dismiss the appeal.

Decision

- 29. **There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

- 30. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. No-one shall publish or reveal any information, including the name or address of the appellant/respondent, likely to lead members of the public to identify the appellant/respondent. Failure to comply with this order could amount to a contempt of court.

Signed.....

Upper Tribunal Judge Hanson

Dated 20 May 2022