



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

Appeal Number: PA/07563/2018

THE IMMIGRATION ACTS

**Heard at Bradford
On 28 MAY 2019**

**Decision & Reasons Promulgated
On 31 MAY 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**DA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Sills, instructed by Freedom Solicitors

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. By a decision which I promulgated on 8 March 2019, I found that the First-tier Tribunal had erred in law such that its decision fell to be set aside. My reasons and consequent directions were as follows:

“1. The appellant was born in 1987 and is a male citizen of Iraq. By a decision promulgated on 1 August 2018, the First-tier Tribunal determined the appellant’s appeal against the refusal of asylum issued by the Secretary of State on 23 May 2018. The appeal was allowed on humanitarian protection grounds but otherwise dismissed. The appellant now appeals, with permission, to the Upper Tribunal. He

argues that the First-tier Tribunal should have allowed his appeal on asylum grounds.

2. At the initial hearing at Bradford on 27 February 2019, I found that the First-tier Tribunal had erred in law such that its decision fell to be set aside. The appellant claims asylum on the basis that he is an atheist and would campaign as such if returned to Iraq. He is a Kurd who has lived in IKR but both parties acknowledge that he would be removed to Baghdad and, being without a CSID card or the means to obtain a replacement, he would be at risk in Baghdad before he could arrange to exercise internal flight to the IKR. It is unclear from the judge's decision whether she believed that the appellant could relocate to the IKR; she states at [25] that he cannot but elsewhere makes a number of comments regarding the attitudes towards atheism in Kurdistan, including commenting that being an atheist in the IKR may be 'easy.' Moreover, the judge appears to have relied [20] upon a news article referred to in a Country of Origin Information Request (COIR) which suggests that as many as '32%' of the population of Iraq is atheist. It is not clear what weight the judge has placed on this surprising statistic. I find that the judge has not properly considered risk to the appellant as a campaigning atheist in Iraq and as an apostate from the religion of Islam. She has not engaged with the reasons why the appellant may refrain from campaigning for atheism in Iraq (see *HJ (Iran)* [2010] UKSC 31). I set aside the decision of the First-tier Tribunal. I am grateful to Mr Sills, who appeared for the appellant, for drafting directions in preparation for the resumed hearing which will take place at Bradford before me on a date to be fixed. Those directions have now been agreed by both parties and, subject to minor amendments, also by me. I set out the directions below.

Notice of Decision

The decision of the First-tier Tribunal is set aside. The Upper Tribunal shall remake the decision following the resumed hearing at Bradford before Upper Tribunal Judge Lane on a date to be fixed (2 hours; Kurdish Sorani interpreter)

The following directions shall apply:

Matters not in dispute:

1. The Appellant is entitled to humanitarian protection on the basis that he is at risk of destitution due to his inability to obtain a CSID card. He is unable safely to enter the IKR.
2. The Appellant is an atheist.
3. The Appellant is an openly campaigning atheist in the UK.
4. The Appellant would continue to be an openly campaigning atheist in Iraq
5. The only reason the Appellant may not live as an openly campaigning atheist in Iraq would be his fear of persecution.

Issues to be determined by the Upper Tribunal at the resumed hearing

1. Does the Appellant have a well-founded fear of persecution as an openly campaigning atheist in Iraq?

Directions for the resumed hearing in the Upper Tribunal

1. The Secretary of State shall notify the Upper Tribunal in writing within 14 days of receiving the error of law decision/directions if he wishes to cross-examine the Appellant. If Secretary of State fails to notify the Upper Tribunal within 14 days, he will not be permitted to cross-examine the Appellant at the resumed hearing.
2. Both parties may file at the Upper Tribunal and serve on each other additional evidence going to the issue in dispute no less than 5 days before the resumed hearing.

Other Matters

3. The Respondent is invited to consider whether to continue to contest Appellant's asylum appeal. If the Respondent decides not to continue to contest the appeal he may seek to agree with the appellant a draft consent order disposing of the proceedings pursuant to paragraph 39, Tribunal Procedure (Upper Tribunal) Rules 2008."
 2. At the resumed hearing, the appellant produced fresh background material in the form of a supplementary bundle. Of particular relevance is a Query Response produced by the European Asylum Support Office (EASO) and dated 10 April 2018 which considers atheism in Iraq, including Kurdistan. This document records that in Iraq atheism is equated with blasphemy and apostasy. The report records a story in 'Your Middle East' from 2014 of a 16-year-old student from Erbil who was tortured by the police having declared himself an atheist. It is true that the background material does not provide many specific examples such as that but that is, perhaps, not surprising given that a strong theme emerging from the background material is that atheists take rigorous steps to conceal their opinions from the authorities throughout Iraq, including Kurdistan. Al-Monitor is reported as having stated that, 'there are many Iraqi websites and blogs that cater to atheists, but they all keep their membership lists secret for fear of being persecuted and killed by extremist religious militias in groups or even by ordinary citizens in the street.' The threat, therefore, to atheists appears to come from both state and non-state actors. It is also clear that those who are atheists can only live in Iraq safely by concealing their atheist activities and opinions and they do so because openly expressing such views would expose them to a real risk of persecution or Article 3 ECHR ill-treatment.
 3. There is a further issue. The appellant does not possess a CSID card. The appellant would, by operation of the Secretary of State's current policy, be returned to Baghdad. The background material indicates that, in addition to the usual problems in obtaining a card which arise in cases involving returnees (see *AA (Iraq)* [2017] EWCA Civ 944), the US State Department recorded in 2016 that cards would only be issued to those who declared their religion to be Christian, Sabaeen-Mandaeen, Yezidi and Muslim; there appears to be no provision at all for a card to be issued to a declared atheist.

4. Mr Diwnycz, who appeared for the Secretary of State, submitted that the case turned upon whether the appellant is a proselytising atheist. However, that submission appears to ignore paragraph [4] of the agreed directions (see above) and the clear evidence that has been produced which shows that the appellant would be permitted no public expression of his atheist beliefs because of a fear of persecution; any risk would not be confined to the proselytising of atheism.
5. In the light of the agreed facts upon which the resumed hearing has proceeded considering the evidence which was before the First-tier Tribunal together with the new background material produced before the Upper Tribunal, I find that the appellant, a genuinely committed atheist, would, if returned to Iraq, take steps to conceal his atheism solely in order to avoid the risk of suffering persecution at the hands of state actors or Article 3 ECHR ill-treatment at the hands of non-state actors. In addition, it is pointless to speculate whether the appellant could obtain a CSID card; I find that he would be unable to complete the application for such a card without dissembling as to his lack of belief in any of the religions recognised by the Iraqi state. He would, therefore, as a sole male Kurdish returnee in Baghdad be exposed to a real risk of harm because he would not have the required card nor could he obtain one. On the particular facts of this appeal, the appellant's appeal against the Secretary of State's refusal to give him international protection is allowed.

Notice of Decision

The appellant's appeal against the decision of the Secretary of State dated 28 May 2018 is allowed on asylum grounds and human rights grounds (Article 3 ECHR)

Signed

Date 28 MAY 2019

Upper Tribunal Judge Lane

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

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.