



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

Appeal Number: PA/02475/2020

THE IMMIGRATION ACTS

**Heard at Cardiff Civil Justice Centre
On 30 September 2021**

**Decision & Reasons
Promulgated
On 1 November 2021**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**F A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Frost, instructed by Migrant Legal Project

For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to contempt of court proceedings.
2. The appellant is a citizen of Iraq of Kurdish ethnicity who was born on 20 January 1988.

3. The appellant arrived in the United Kingdom clandestinely on 1 March 2019. He claimed asylum on 3 March 2019. The basis of his claim was that he came from the IKR in Iraq. He claimed to fear his family in Iraq as he changed his religion from being a Muslim to being interested in Christianity, including attending a Christian church in the IKR.
4. On 28 February 2020, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under the ECHR.
5. The appellant appealed to the First-tier Tribunal. In a decision sent on 14 December 2020, Judge Rhys-Davies dismissed the appellant's appeal on all grounds. The judge made an adverse credibility finding and did not accept that the appellant was at risk from his family on return to Iraq (in the IKR) on the basis that he had changed his religion from being a Muslim to being interested in Christianity and had attended church.
6. The appellant sought permission to appeal to the Upper Tribunal on three grounds challenging the judge's adverse credibility finding.
7. Ground 1 contends that the judge had made a number of criticisms concerning the appellant's evidence which had not been raised with the appellant at the hearing and that was unfair. Ground 2 contends that the judge had failed to take into account background evidence which suggested, contrary to his finding and reasoning, that the appellant's family would be more interested in his change of religion when he started to attend a Christian Church. Ground 3 contends that the judge was wrong to find that it was inherently improbable that the appellant was able to leave the IKR by avoiding checkpoints.
8. Initially, the First-tier Tribunal (Judge Easterman) refused the appellant permission to appeal on 21 January 2021. However, on 29 January 2021 the Upper Tribunal (UTJ Lindsley) granted the appellant permission to appeal on all grounds.
9. The appeal was listed for a hearing at the Cardiff Civil Justice Centre on 30 September 2021. At that hearing, with everyone present in court, the appellant was represented by Mr Frost and the respondent by Mr Bates.
10. At the outset of the hearing, Mr Bates conceded that Ground 2 established a material error of law which made the judge's adverse credibility finding unsustainable. He accepted that, without considering the background evidence, the judge was not entitled to find that it was implausible that the appellant's family would only decide to harm him because of his change of religion some eight years after they had begun to threaten him. Mr Bates conceded that the background evidence showed that the attendance at church might lead to the appellant being perceived publicly as an apostate which would concern the family more. That conduct by the appellant could not, as the judge concluded, be seen as "just the latest insult of many to his family's wishes". On the basis of that, Mr Bates conceded that the judge's adverse credibility finding could not

stand and his decision should be set aside and the appeal remitted to the First-tier Tribunal for a *de novo* rehearing.

11. I agree with, and accept, Mr Bates' concession on behalf of the Secretary of State. The judge materially erred in law, on the basis set out in Ground 2, in reaching his adverse credibility finding. As a consequence, the judge's decision to dismiss the appellant's appeal is unsustainable and cannot stand.

Decision

12. For the above reasons, the decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law. That decision cannot stand and is set aside.
13. Having regard to the nature and extent of fact-finding required, and having regard to para 7.2 of the Senior President's Practice Statement, the appropriate disposal of the appeal is to remit it to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge Rhys-Davies. None of the judge's findings are preserved.

Signed

Andrew Grubb

Judge of the Upper Tribunal
1 October 2021