



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

**Appeal Number: IA/00942/2020  
(PA/51334/2020)**

**THE IMMIGRATION ACTS**

**Heard at Cardiff Civil Justice Decision & Reasons Promulgated  
Centre  
On the 17 February 2022 On the 29 March 2022  
Remotely by Microsoft Teams**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**AN  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Abdullah, Hazelhurst Solicitors

For the Respondent: Ms S Rushforth, 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.

## **Introduction**

2. The appellant is a citizen of Iraq who was born on 28 June 1993. She is Kurdish and comes from the IKR.
3. The appellant arrived clandestinely in the United Kingdom on 18 February 2016. She claimed asylum on 19 February 2016. The basis of her claim was that she feared that she would be the victim of an honour killing as a result of a relationship with a boyfriend without her family's approval. She claimed that they had threatened her. On 17 November 2017, the Secretary of State refused the appellant's claim for asylum. Her subsequent appeal to the First-tier Tribunal was dismissed on 23 January 2018 and she became appeal rights exhausted on 7 February 2018. In that appeal, the judge made an adverse credibility finding and did not accept her account and that she would be at risk of an honour killing as a result.
4. On 29 May 2019 (supplemented on 5 August 2020), further submissions were made on behalf of the appellant. First, she claimed that she would be at risk because she will be forced to undergo Female Genital Mutilation ("FGM") and secondly, that he would be at risk as a result of being "westernised" as she was now living a western lifestyle and had adopted western culture. Her family in Iraq would not tolerate that behaviour.
5. On 18 August 2020, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under the ECHR.

## **The Appeal to the First-tier Tribunal**

6. The appellant again appealed to the First-tier Tribunal. Judge Thorne in a decision dated 10 June 2021, dismissed the appellant's appeal on all grounds. First, the judge, in line with the finding of the First-tier Tribunal in the earlier appeal, did not accept that the appellant would be at risk on return to Iraq as a victim of an honour killing. Secondly, the judge rejected the appellant's account that both she and her sister would be at risk of forced "FGM" if returned to Iraq. Thirdly, the judge did not accept that, as a result of the appellant's "westernisation" since living in the UK, she would be at real risk of persecution on return to Iraq.

## **The Appeal to the Upper Tribunal**

7. The appellant appealed to the Upper Tribunal on the ground that the judge had erred in law in assessing the appellant's claim based upon her "westernisation" since living in the UK. The grounds contend that the judge failed properly to consider the appellant's evidence as to how she had become "westernised" and also the background evidence concerning the risk to the appellant, as a woman, in those circumstances on return.
8. The judge's adverse findings in relation to the appellant's claim based upon a risk of an honour killing or because she would be forced to undergo "FGM" were not challenged in the grounds.

9. Initially, the First-tier Tribunal (RJ Grant-Hutchison) refused the appellant permission to appeal on 2 July 2021. However, on 16 November 2021, on renewal, UTJ Plimmer granted the appellant permission to appeal on the basis that:

“It is arguable that inadequate attention has been given to the real issues in the case relating to the appellant’s prospective risk as a thoroughly westernised woman”.

10. The appeal was listed for hearing at the Cardiff Civil Justice Centre on 17 February 2022. The appeal was heard remotely by Microsoft Teams. I was based in court and Mr Abdullah, who represented the appellant, and Ms Rushforth, who represented the Secretary of State, joined the hearing remotely by Microsoft Teams.

### **The Submissions**

11. On behalf of the appellant, Mr Abdullah relied upon the grounds of appeal.
12. Mr Abdullah submitted that in paras 54–55 of the decision, the judge had failed properly to consider the risk to the appellant on return as a result of her “westernisation” in the UK. He submitted that the judge had failed properly to take into account the appellant’s evidence in her witness statement (at page 7 of the bundle), in particular at paras 3, 4–12, 13, 16, and 17–18 in which the appellant set out that she wears western clothing, has a visible tattoo and lives with a partner outside marriage and believes in relationships with members of the opposite sex outside marriage. Her evidence was that she could not suppress this. Further, she no longer practised her Muslim faith and believed in gender equality.
13. Mr Abdullah also submitted that the judge had been wrong, in para 54 of his determination, to state that there was no background evidence relating to the risk to a woman on return to Iraq who was westernised, in particular wearing western style clothing and having a tattoo. Mr Abdullah drew my attention to a number of EASO Reports in the bundle at pages 50–51, 54 and 60 in which, he submitted, there was evidence that individuals (in particular women) adopting inappropriate dress styles and westernised behaviour would be at risk from their family and society in Iraq. He also placed reliance upon the *CPIN*, “Iraq: ‘Kurdish honour’ crimes” (August 2017) at paras 2.3.3, 7.2.3 and 7.2.8 relating to the punishment for perceived “honour offences” and the risk of violence to women who did not conform to social expectations.
14. Mr Abdullah placed reliance upon the recent Upper Tribunal decision in YMKA and Ors (‘westernisation’) Iraq [2022] UKUT 16 (IAC) (“YMKA”). He specifically placed reliance upon [31]–[33] of UTJ Bruce’s decision that it was important for a judge to analyse the relied upon behaviour of “westernisation” and the motivation underlying it. Mr Abdullah submitted that the distinction drawn in YMKA between behaviour that represented a “socially liberal lifestyle” and behaviour which reflected a protected characteristic such as “political opinion or religious belief” or which would

be perceived as such, had not been engaged with by the judge in reaching his conclusion in paras 54-55.

15. Mr Abdullah submitted that the judge had failed to consider the appellant's evidence, the background evidence and, as the case of YMKA demonstrated, there was a potential risk, with which the judge had not grappled, arising from her actual or perceived rejection of Islamic lifestyle.
16. On behalf of the respondent, Ms Rushforth submitted that the judge had made adequate findings, having regard to Devaseelan, and the earlier judge's conclusion that the appellant was not credible. Ms Rushforth submitted that the appellant had no protected right to enjoy a socially liberal lifestyle unless her lifestyle beliefs reflected a protected characteristic which, Ms Rushforth submitted, was not established. She submitted that, applying the distinction in YMKA, there was only brief evidence from the appellant concerning her tattoo and that she had relinquished her Islamic beliefs such that she would not be at risk on return because of her 'westernised' behaviour. She submitted that the judge had not been wrong to conclude that there was no evidence that established that a woman wearing a tattoo would be at risk of persecution on return. The judge had made clear findings that the appellant was not at risk from her family who were not threatening her.
17. Ms Rushforth invited me to dismiss the appellant's appeal and to uphold the judge's decision.

## **Discussion**

18. Although not a country guidance decision, UTJ Bruce's decision in YMKA, is a helpful and instructive decision concerning a claim, such as the one made by the appellant, that she would be at risk of persecution for a Convention reason as a result of her "westernisation". The judicial headnote summarises UTJ Bruce's conclusion as to whether such a claim could fall within the Refugee Convention as follows:

"The Refugee Convention does not offer protection from social conservatism per se. There is no protected right to enjoy a socially liberal lifestyle.

The Convention may however be engaged where

- (a) a 'westernised' lifestyle reflects a protected characteristic such as political opinion or religious belief; or
- (b) where there is a real risk that the individual concerned would be unable to mask his westernisation, and where actors of persecution would therefore impute such protected characteristics to him."

19. As will be clear, UTJ Bruce distinguished between a "westernised" lifestyle or behaviour which was simply a reflection of a "socially liberal lifestyle" and such a lifestyle behaviour which would be, in fact, *either* a statement of political opinion or religious belief by the individual concerned *or* would be perceived as such by the society to which he or she returned.

20. At [26]-[27], UTJ Bruce expressed these views as to what was meant by “westernisation”:

“26. What does it mean to be 'westernised'? It is striking that a term that is used so frequently in this jurisdiction has never been more closely defined. I would suggest that this is because, like obscene material, it is because we 'know it when we see it' [3]. These appeals do however highlight how that, somewhat amorphous, nature of 'westernisation' is in danger of obscuring our obligation to protect core entitlements.

27. In the evidence before me 'westernisation' appears to amount to a fairly loose bundle of characteristics: an adherence to a particular set of values, a rejection of religion, and prominently, the freedom to enjoy a socially liberal way of life. The Appellants' witness statements make repeated reference to their 'western lifestyles' and how they do not want to give them up. They mix freely with members of the opposite sex; they all accept A4's relationship with her boyfriend; they go out and socialise without fear of saying the wrong thing; they cherish friendships with individuals of diverse backgrounds; they enjoy an unfettered range of entertainment and culture; the children will grow up free of the expectations placed upon them by Iraqi society, particularly in terms of gender roles and personal choices; the girls make it clear that they do not want to wear conservative Islamic clothing.”

21. I agree with UTJ Bruce’s views on the essence of “westernisation” applicable for the purposes of this appeal.

22. Then, at [28]-[33] UTJ Bruce considered when the demonstration by an individual of such “westernised” behaviour could give rise to a refugee claim. She said this:

“28. It is easy to see how these matters - the composite parts of a private life - have come to assume such importance for the Appellants. Those social freedoms, which many of us take for granted, are particularly valued by those who face the prospect of a very different kind of life. Are they not, however, freedoms that the Appellants can reasonably be expected to relinquish in order to live safely in Iraq?

29. It is trite that the Refugee Convention has a more limited purpose than the Universal Declaration of Human Rights: it is not its function to protect people from social conservatism. As Lord Hope puts it in HJ (Iran) (FC) v Secretary of State for the Home Department [2010] UKSC 31; [\[2010\] Imm AR 729](#):

"The Convention is not there to safeguard or protect potentially affected persons from having to live in regimes where pluralist liberal values are less respected, even much less respected, than they are here. It is there to secure international protection to the extent agreed by the contracting states."

30. It cannot be said that the contracting states agreed to offer a protected and unfettered right to enjoy one's life in the way that one would like: there is no human right to listen to a particular kind of music, drink alcohol or to wear jeans. A claim based simply on such matters could not, under the Convention, succeed. But is there not more at stake here?

31. Integral to the Appellants' claim to be 'westernised' - and their collective decision to live their lives in the way that they do - are their values. All the adults speak of their abhorrence of extremism, and their support for a secular, democratic, society; the family evidences a strong belief in gender equality. Whilst A4's decision to date her boyfriend, or to wear what she likes, are at first glance wholly personal matters, they are here expressions of a deeply held ideological belief. Such political opinion is, uncontroversially, a characteristic capable of attracting protection under the international framework. No dispute arises that there is a protected right not to believe in a god: see Article 10(1)(b) of the Qualification Directive (2004/83/EC) and Article 18 of the International Covenant on Civil and Political Rights 1966. Similarly, it is well established that in certain circumstances the harms visited upon women can amount to persecution for reasons of their membership of that particular social group. Where, therefore, the Convention does not offer protection from social conservatism generally, it *can* do so in certain circumstances, here where the modifications required of the claimants amount to suppressions of the inalienable rights afforded to them by international law.
32. There is another way in which 'westernisation' could entitle an individual to protection. In his evidence A1 very candidly explained that he might be able to "fake" being Muslim. He has, for instance, seen many Muslims at prayer throughout his life, and so knows the order in which you stand, bow etc. On further probing, however, he admitted that he had no idea what the words are. This highlights a discrete protection issue. Envisage a claim which would *prima facie* fail on the grounds articulated by Hope LJ in HJ (Iran) and by Laws LJ in Amare: a man who, for instance, had no particular religious or ideological underpinning to his lifestyle, who simply enjoys the freedom that life in the UK can offer. That man could quite reasonably be *expected*, as a matter of law, to simply conform to the norms and expectations of the society that he is going back to. The Convention is not there to protect him from having to live under a regime where pluralist liberal values are less respected than they are here. The question remains whether it is *possible* for him to safely do that. If an individual has for instance been living in the UK for a very long time or is unfamiliar with the prevailing culture in his country of origin, there may always be the risk that his modified behaviour will slip, or he will not know how he is supposed to behave. In a particularly hostile environment, such as those discussed in the country guidance cases I mention above, this could expose him to harm. It would then matter little what he himself believed: the necessary nexus is created by the perspective of the persecutor.
33. A claim based on 'westernisation' can therefore succeed in one, or both, of these ways. Although evidence about fashion, or entertainment preferences, appears at first glance to consist of little more than an appeal to pluralism, and thus lying entirely outwith the protection framework, that evidence must be carefully assessed. First, to determine whether the lifestyle choices of the claimant are in fact an expression of beliefs prohibited or disapproved of in his country of origin. Second, whether there is a real risk of that claimant failing to effectively mask his 'western' identity and thus exposing himself to harm."
23. I agree with this analysis. That, as can be seen, is reflected in the headnote distinguishing between the individual who would simply choose to pursue a more "socially liberal lifestyle" and an individual who, in doing so, would in the context of their country of origin be expressing a political opinion or a religious belief, or would be perceived as doing so. As UTJ

Bruce pointed out in [33], in order to distinguish between these two situations the “evidence must be carefully assessed”.

24. In this appeal, the judge dealt with the appellant’s claim based upon “westernisation” at paras 54–55:

“54. I accept that A has a tattoo on her shoulder and appears in a number of photos wearing western clothing. However there is inadequate evidence of any further ‘westernisation’ of the A so as to put her at risk in Iraq. I conclude that there is inadequate evidence to suggest A’s family would wish to harm her because she has worn such clothes or a tattoo. Moreover, I have not been referred to any general country information that establishes that the wearing of western style clothes or having a tattoo on the shoulder puts a woman at risk of persecution in Iraq.

55. In addition I conclude that even if she were at some risk because of the tattoo and a predilection for certain clothing. It cannot be said that eliminating the risk of such harm by taking avoiding action such as wearing a T-shirt constitutes a breach of a fundamental human right as envisaged in **HJ (Iran) [2010] UKSC 31**”.

25. If the judge could be said to have had in mind the distinction drawn by UTJ Bruce in YMKA, his findings clearly put the appellant in the category of a person who is merely adopting a more “socially liberal lifestyle”. The reasoning is, however, unsustainable for two connected reasons.

26. First, the judge failed to engage with the appellant’s evidence concerning her behaviour and her motivation for doing so both in the UK and on return to Iraq.

27. In para 3 of her witness statement the appellant states:

“3. I wish to state that my family will never accept my new way of life and they will certainly not tolerate me living freely or independently. Furthermore, I wish to state that my fears have grown stronger now as my family will never accept me for who I am today. I have adopted a western lifestyle and I wish to live my life according to my own wishes and without restriction from my family”.

28. At paras 4–5, the appellant refers to her relationship with her boyfriend in the UK.

29. At para 6 the appellant says:

“My life choices mean everything to me and I am not prepared to sacrifice my freedom to surrender to a life of suppression where my every move is controlled by a male dominated family and society”.

30. At para 13 the appellant says:

“13. ... Since I came to the UK in February 2016, I am a completely different person. I no longer practise my own faith and religion and I believe that in me doing so, this is a matter of my own choice and freedom. I feel that I am now able to openly express my own feelings where I am not judged for who I am and choices that I make”.

31. At para 14 the appellant continues:

“14. All my friends are westernised and I feel that by living in a western culture and society, this has allowed me to live freely and openly. I have gained confidence to be myself and I no longer have to answer to anyone regarding my life choices. However, whilst I was living in Iraq, I was constantly looking over my shoulder because I felt that I had to answer to my family”.

32. At para 15, the appellant says:

“15. ....I also feel that I was not allowed to live freely in Iraq due to religious and cultural restrictions. I was forced to cover up and wear a veil in public. It was also compulsory for me to pray five times a day and to observe fasting”.

33. In para 16 the appellant comments that:

“16. During my time in the UK, I have breached all of my family’s values and traditions and I have gone against their religious and moral principles. I am no longer afraid to show my skin and to wear short dresses and skirts whenever I wish. I do not feel restricted in how I feel inside and I do not feel judged by others. I no longer feel anxious when I am myself and around likeminded people, whereas in Iraq I had to pretend to be someone I am not”.

34. Then at para 17 the appellant deals with her “permanent tattoo”:

“17. I have a permanent tattoo on my shoulder which states ‘Take these broken wings and learn to fly’. I will say that this is a symbol of my pain and experiences and my tattoo is a proclamation of my true feelings and beliefs. This is because I feel trapped like a caged bird whilst I was living with my family and they did not allow me to live freely like I am doing today. I also feel that since coming to the UK, I feel independent and liberated, as I have no one to control me emotionally or mentally”.

35. At para 22, the appellant states:

“22. I wish to state that body tattoos are not permissible in Islam. However, my tattoo is in a highly visible place and I feel that it is a profound statement of my beliefs. I believe that I would surely be persecuted in Iraq for having a tattoo, as body art is perceived as rebellious and any person would consider me to be non-Muslim for having it”.

36. At para 25, the appellant says:

“I also fear that I will be ostracised from the community for not conforming to my family’s morals and going against their culture and tradition”.

37. At para 31, the appellant says:

“31. I have adopted the British culture in its entirety and therefore it is impossible for me to return to Iraq where I will be forced to live by the norms and beliefs of the Iraqi people which I no longer believe in. My values and beliefs means everything to me and it would destroy me both mentally and psychologically if I had to deny this out of fear”.



38. There is, in my judgment, certainly evidence in the appellant's witness statement which, if accepted, a judge could find reflected an anti-Islamic stance by the appellant.
39. Secondly, based on the background evidence, such behaviour undoubtedly raises the issue that the appellant might well, as a woman returning to the Islamic society pertaining in Iraq, be *perceived* as anti-Islamic.
40. The EASO document "Individuals perceived to transgress moral codes" at pages 51-52 of the bundle contains the following under the heading "Persons displaying westernised behaviour":

"Persons who are seen as not conforming with the local social and cultural norms by displaying 'westernised' behaviour have been subjected to threats and attacks by individuals in society, as well as by militia groups. PMU are targeting people that show signs of deviating morally according to their interpretation of Shia norms, sometimes with the support of the Shia community. LGBT persons, Christians, alcohol sellers and artists are among those reportedly targeted.

Men and especially women face pressure to conform to conservative standards on personal appearances. Shia militia in Baghdad and Basrah seek to enforce strict dress codes and are responsible for violent attacks on women whose dress styles are considered inappropriate. Women have been targeted for assassination by militias. For example, due to wearing the 'wrong' clothes, or (allegedly) being connected to prostitution. According to a 2017 report, 'some Muslims continued to threaten women and girls, regardless of their religious affiliation, for refusing to wear the hijab, for dressing in Western-style clothing, or for not adhering to strict interpretations of Islamic norms governing public behaviour'".

41. The EASO Report goes on to state:

"The acts to which individuals under this profile could be exposed are of such severe nature that they would amount to persecution (e.g. violent attacks, killings).

Not all individuals under this profile would face the level of risk required to establish a well-founded fear of persecution. The individual assessment of whether or not there is a reasonable degree of likelihood for the applicant to face persecution should take into account risk-impacting circumstances, such as: gender (the risk is higher for women), conservative environment, perception of traditional gender roles by the family and society, etc".

42. That report identifies, as a particular factor, that an individual is a woman who is not conforming to the Islamic mores in Iraq.
43. In a second EASO Report, "Violence against women and girls, including domestic violence and sexual abuse" at pages 54-56, violence against women is highlighted.
44. In a third EASO Report, "Lack of male support network" at pages 60-61 of the bundle, it is noted, *inter alia*, that:

"Living alone as a woman is not generally accepted in Iraq because it is considered inappropriate behaviour".

45. Mr Abdullah also referred me to the *CPIN* at paras 2.3.3, 7.2.3 and 7.2.8 which, in the circumstances, I do not consider it necessary to set out in any detail, but simply note that the material is consistent with the EASO Reports to which I have already referred.
46. I do not accept Ms Rushforth's submission that, in paras 54-56 of his decision, the judge has adequately dealt with the appellant's evidence and the background evidence now seen in the light of the approach set out in *YMKA*. The appellant's claim based upon her "westernisation" is simply not resolved, as Ms Rushforth suggested, by the judge's unchallenged findings, including his adverse credibility finding, in relation to the appellant's initial claim that she was at risk of an honour killing or from forced "FGM" on return.
47. Crucially, the judge has not engaged in the 'careful assessment' of the evidence by the appellant as to her westernised behaviour and what motivation underlies it. He has simply characterised it as driven by a desire to be "socially liberal". The appellant's evidence potentially provided a different motivation, namely her rejection of the political and religious mores in Iraq. But, in any event, given the background evidence the judge failed to deal with how her conduct could be *perceived* in Iraq and, potentially, as being anti-Islamic. Whilst the background evidence does not specifically refer to the social perception of a woman with a tattoo, it forms part of a 'westernised' style of presentation which is the focus of the background material. If that were the case, the appellant would have brought her claim within a Convention reason (see [33] of *YMKA*) and if the appellant could establish that she would be at risk of persecution from her family or, indeed, the wider community in Iraq as a result, then she would have established her claim under the Refugee Convention. Contrary to what the judge stated in para 55 of his decision, she could not be expected to eliminate any risk arising on that basis by adjusting her conduct and beliefs so as not to appear "westernised" following *HJ (Iran)*.
48. These are factual matters which the judge did not properly address because he did not grapple with the appellant's evidence and background evidence as was required. Of course, he did not have the advantage of the analysis by UTJ Bruce in *YMKA*. In re-making the decision, that case will, no doubt, provide an important backdrop on the correct approach when analysing the evidence.
49. For these reasons, the judge materially erred in law in dismissing the appellant's asylum claim.

### **Decision**

50. 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.

51. The judge's adverse findings in paras 48-53 were not challenged and are preserved. Likewise, the judge's finding in para 56 that the appellant could obtain identification documents from her family is not challenged and is also preserved. However, that must be subject to any further evidence and findings made by the judge in relation to the appellant's claim based upon her "westernisation" which may impact upon her ability to obtain ID documents from Iraq through her family. The issue of ID documents, if relevant when the decision is re-made, will, of course, have to take account of the UT's forthcoming country guidance decision of SMO & Others.
52. There remain, however, in relation to the appellant's claim based upon her "westernisation" significant evidential and fact-finding issues. Having regard to the nature and extent of those, and having regard to para 7.2 of the Senior President's Practice Statement, the appropriate disposal of this appeal is to remit it to the First-tier Tribunal in order to re-make the decision in relation to the appellant's asylum appeal and, if relevant, humanitarian protection claim and under the ECHR, to the extent that I have indicated. The appeal should be heard by a judge other than Judge Thorne.

Signed

**Andrew Grubb**

Judge of the Upper Tribunal  
22 February 2022