



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

Appeal Number: UI-2022-002843
PA/00019/2021

THE IMMIGRATION ACTS

**Heard at Bradford
On 28 October 2022**

**Decision & Reasons Promulgated
On 3 December 2022**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

ZANA FAIK MUHAMMAD
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Selway instructed by Immigration Advice Centre.
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 Ali ('the Judge') promulgated on 4 April 2022 in which the Judge dismissed his claim for leave to remain in the United Kingdom as a refugee or on any other basis.
- 2.** The appellant is a citizen of Iraq born on 2 November 1987 who arrived in the UK on 11 October 2018. His claim for international

protection was refused on 10 September 2020 and it is the appeal against that decision which came before the Judge.

3. The core of the appellant's case is that he faces a real risk from the Kurdish authorities and believed a warrant for his arrest had been issued in the KGR as a result of social posts he published criticising them and because they think he has threatened a member of the KDP, that he is agnostic and has experienced problems as a result of this being Kirkuk where he claims to have been insulted by people, expelled from shops, and to be unable to have a relationship with any girl as a result of that [6]. The appellant also claims to have a fear on return to Iraq of being killed by the PMF because he has worked with the US forces.
4. The Judge's findings are set out from [28] of the decision under challenge. The Judge notes the Secretary of State accepts the appellant is an Iraqi national, that he is of Kurdish ethnicity, that he has agnostic beliefs, that he was employed as a kitchen worker for the U.S. Army, and that there was a bomb incident in 2017. All other aspects of the appellant's claim were contested.
5. The Judge examines the evidence provided in support of the claim the appellant's father had been killed but found the content of the death certificate undermined its reliability and that even taking the appellant's case at its highest, there was nothing in the death certificate that linked the death of his father to any involvement with the Ba'ath party or to show he was killed by the KRG authorities.
6. The Judge rejected the reliability of the arrest warrants at [34] for which adequate reasons are given. The Judge did not accept the claimed risk on return and did not accept the appellant would be at risk in his home area of Kirkuk or the IKR.
7. This appeal originates from a claim relating to a discrete part of the Judge's findings recorded at [35] in the following terms:
 35. The Appellant claims that he would be at risk on return to his home area because of his agnostic beliefs and because he received 2 threatening messages from a person called Yahya Ali. However, I do not accept this aspect of his evidence is credible because upon reading the transcript of those messages there is no threat contained within them. I asked Mr cell waiver could identify or refer me to wear in the messages the threat was and he could not do so. I therefore do not accept that the Appellant was threatened by Yahya Ali on account of his Agnostic beliefs do not accept that you will be at risk on return to his home area on account of his Agnostic beliefs.
8. The grounds of appeal assert the Judge has conflated two different aspects of the appellant's evidence which are the messages and the online material that were held not to create a risk, which is a findings which are not challenged, and a discrete matter of the appellant's agnosticism creating a risk for him on return per se.
9. Permission to appeal was granted by another judge of the First-tier Tribunal. The appeal is opposed by the Secretary of State.

Error of law

- 10.** Miss Young in her submissions referred to the fact the appellant's case was not put to the Judge on the basis of which it is now suggested it needed to be considered, based upon a claimed wider risk to the appellant as an agnostic. In his witness statement the appellant claimed that as he was not practising Islam it would cause him trouble if he was to be returned to Iraq but it is not made out that every member male member of Iraq practices Islam in terms of going to the mosque or openly professes their faith. Whilst Jumma is a congregational prayer held on Friday at the mosque, which is held to have more blessing than individual prayer, it is not made out it is a mandatory requirement in the appellant's home area failure which will result in persecution or ill-treatment. Many Muslims pray outside the mosque, which is permitted in the Quran as individuals or in groups, which carries the same grading as praying within the mosque. As such the fact the person does not attend the mosque does not mean that they may be acting in a manner that could lead to real risk. It was not made out that if the appellant did not attend the mosque or other religious festivals or events he would, for this reason alone, be targeted for "not practising Islam". It is not suggested there will be anything in relation to the appellant's appearance or general conduct on a day-to-day basis that will create a real risk for him on return as there was no evidence before the Judge of any general risk in light of his previous conduct; which it was not made out was behaviour followed to avoid the risk of persecution. On the facts as found the appellant's claim has not been shown to be credible in this respect.
- 11.** It is right not to challenge the Judges specific findings in relation to the threat from Yahya Ali as that is a finding within the range of those reasonably open to the Judge on the evidence.
- 12.** Much discussion occurred during the hearing as to the difference between an atheist and agnostic. The respondents CIPU, Religious Minorities, Iraq, July 2021 speaks of a risk to atheists even though atheism is not illegal in Iraq as some State actors equate atheism with blasphemy.
- 13.** I find there is, however, a material difference between an atheist and agnostic. An atheist is a person who doesn't believe in any God's and therefore a person who does not affirm the proposition that at least one God exists. As Islam believes in the existence of and worships Allah such beliefs are contrary to a fundamental aspect of Islam.
- 14.** An agnostic, which the appellant claims to be, is a person who does not claim to know whether God exists or not. Although both deal with the question regarding the existence of God atheism involves a person who does or did not believe God exists whereas agnosticism involves a person who does not know.
- 15.** There was no evidence before the Judge to show that the appellant had on his account of his agnostic beliefs, experience any credible real risk of harm in Iraq or that he would do so on return. There is nothing in the appellant's conduct or behaviour would indicate a real risk in

the eyes of potential persecuted for transgressing moral codes. The European Asylum Support Office document dated 15 March 2009 in the appellant's bundle related to the question of atheism and conversion/apostasy in the IKR rather than the specific facts of this case.

- 16.** There was no evidence that the appellant had chosen to act in a manner that will create a real risk on return or that he acted as he did out of the fear of a risk of persecution if he acted differently. Therefore the HJ(Iran) principle does not arise as there was no evidence that the appellant would not choose to act as he had always done if he is returned.
- 17.** Having carefully re-read all the statements, evidence, country material provided, and the original and later pleadings, I find that the appellant has failed to establish the Judge has made a decision infected by material legal error. The Judge was right to dismiss the credibility of the appellant's account and was right to find no real risk on return from the named individual. The Judge viewed the appellant's claim he would face a real risk on return as a result of his agnostic beliefs. The finding of no real risk for any of the reasons claimed is a finding within the range of those available to the Judge on the evidence. As no legal error material to the decision to dismiss the appeal sufficient to warrant the Upper Tribunal interfering any further in relation to this matter is made out, I dismiss the appeal.

Decision

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

Anonymity.

- 19.** The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated 31 October 2022

