Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00795/2017

THE IMMIGRATION ACTS

Heard at Centre City Tower, Birmingham	**Decision & Reasons Promulgated**
On 15th August 2018	**On 25th September 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

[H H]
~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Bandegani (Counsel)
For the Respondent: Mrs H Aboni (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Boylan-Kemp MBE, promulgated on 22nd August 2017, following a hearing at Birmingham Sheldon Court on 13th July 2017. In the determination, the judge allowed the appeal of the Appellant, whereupon the Respondent

Secretary of State, subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Iraq, and was born on 7th October 1992. He appealed against the decision of the Respondent dated 2nd December 2016 refusing his claim for asylum and for humanitarian protection under paragraph 339C of HC 395.

The Appellant's Claim

3. The basis of the Appellant's claim, who arrived as an unaccompanied minor from Iraq on 12th March 2008, was that he feared persecution due to his religious beliefs as a Christian convert if he was required to return to Iraq (see paragraph 9). The judge held that the Appellant had overall "been consistent in his account of when and how he became involved with the Christian faith and about the process of his conversion" (paragraph 19) and that he was "a genuine Christian convert". The main issue thereafter, for the judge to determine, was the issue of risk upon return to Iraq. The judge heard submissions from the Respondent that the objective evidence showed that religious minorities were not persecuted in Iraq, and evidence from the Appellant's representative, "that the situation is different with apostates", as is set out in the expert report prepared by Sheri Laizer (pages 435 to 456 of the Appellant's bundle), because this shows that the Appellant would indeed be at risk (see paragraph 20).

4. The judge, accordingly, proceeded to decide that the Appellant could not find safety in Iraq and that internal relocation would be unduly harsh for him, such that the appeal fell to be allowed.

Grounds of Application

5. The grounds of application state that the judge failed to provide adequate reasons as to why the Appellant could not successfully relocate in Iraq, and in particular to the KRG area. Second, the judge did not explain why she preferred the evidence of the Appellant's expert over the evidence relied upon by the Respondent in the refusal letter. On 8th November 2017 permission to appeal was granted by the Tribunal on the basis that the judge had not even indicated in her decision what the expert states about the risk to the Appellant in the KRG or why such a risk might cross the threshold into persecution.

Submissions

6. In the submissions before me, Mrs Aboni, appearing on behalf of the Respondent, relied upon the grounds of application. First, the judge had found the Appellant to be a genuine convert from Islam to Christianity. However, the objective evidence contained in the Home Office guidance (referred to at paragraph 20) was that in general a person from a religious minority will not be at risk of serious harm in the southern governorates

including the IKR. Given that the judge had found (at paragraph 21) that the Appellant could potentially return to the IKR, it was not credible to say that the Appellant would be at risk due to his religious conversion "no matter where in Iraq he relocated to". It was not enough for the judge to say that he is required to look into individual circumstances, and having done so, would be satisfied in coming to this conclusion.

7. Second, the judge did not make any finding that the Appellant would be treated as an apostate and the judge's finding in relation to risk on return is unreasoned or inadequately reasoned.

8. Third, insofar as the judge allowed the appeal under Article 8 ECHR, this was partly predicated on the finding that the Appellant's risk on return is a very significant obstacle to his reintegration (paragraph 21). Fourth, the judge's finding (at paragraph 25) that even if she was wrong in this, the Appellant's removal will not be proportionate because this is wholly unreasoned.

9. For his part, Mr Bandegani submitted that, it was not enough to place reliance upon the treatment of religious minorities in the Secretary of State's official guidance, because this was a case that went beyond that, namely, into the specific question of how converts from one religion to another risk being treated as "apostates". Even though in 2006 a new constitution was settled, following the first free and fair elections in that country, in the aftermath of the allied invasion by the UK and USA, the fact was that sharia law still remained the foundational law of Iraqi community. Under this, the Appellant was going to be treated as an apostate, and this was clear from the evidence of Sheri Laizer as the expert in this appeal. Quite simply, it is submitted, this appeal could not succeed for the following reasons.

10. First, the Respondent Secretary of State, in arguing that a country guidance case should not be followed, had to circumvent the high threshold imposed by Brooke LJ in **R (Iran) [2005] EWCA Civ 982**. Otherwise, there was no error of law. All this amounted to was a disagreement with the decision of the judge below.

11. Second, and most importantly, it is not the case that the judge has simply chosen to ignore relevant evidence, before deciding to follow the country guidance. The judge considers everything that is placed before her. She then decides, for reasons that she gives, that she should follow the country guidance and allow the Appellant's appeal. This is clear from the way in which the judge accepts the Respondent Home Office Presenting Officer's submission that "the Appellant would be able to obtain new travel documentation as the Home Office and the embassy would have details of his ID card following his return in 2011" (see paragraph 21). The judge even accepted that the Appellant "would be able to obtain his CSID card with relative ease", and that he could return, as a person of Kurdish ethnicity, to the IKR in principle.

12. However, at this stage, the judge decides to give her reasons for why, to all practical intents and purposes, this was not a viable situation with respect to this Appellant. She goes on to state that,

> "In the light of the fact that the Appellant has converted to Christianity from Islam and therefore be viewed as an apostate, and in consideration of the country expert report when taken in line with the country guidance which indicates that individual factors must be considered when assessing what risk may exist, then I find that I am satisfied that the Appellant would be at real risk of persecution on return …" (paragraph 21).

13. It was clear from this, submitted Mr Bandegani, that the judge was not privileging one category of evidence over another. She has taken the trouble to consider everything, and then providing her reasons for why the appeal should be allowed. There were, as she said, individual factors, and these are in line with the country guidance, suggesting that there was a risk to the Appellant, on the lower standard.

14. Third, if one looks at the Home Office country guidance information, this is only on "Iraq: Religious Minorities", and is not on "apostates" per se (dated August 2016). Even so, submitted Mr Bandegani, the "policy summary" (at page 122 of the Appellant's bundle) is worth noting, as a snapshot of the guidance that is given to the Secretary of State when decisions in such cases are made. Whilst it begins by saying that in general religious minorities are not at risk of persecution in Iraq, it then goes on to say (at paragraph 3.1.2) that "in general, a person from a religious minority is likely to be at risk of persecution from Daesh in the 'contested' areas (Anbar, Diyala, Kirkuk, Ninewah and Salah al-Dan), and from armed groups". This was significant because the Appellant was actually from "Kirkuk". The policy summary then goes on to say that, "a person from a religious minority may not be able to obtain protection from the state in areas outside the KRI" (paragraph 3.1.3).

15. It was this information, submitted Mr Bandegani, that the judge was paying heed to when concluding at paragraph 21 of the determination that the "individual factors" pertinent to the Appellant's position meant that she could not realistically decide that the Appellant would not be at risk of persecution or serious harm as an apostate in Iraq. Fourth, although Mr Bandegani had premised his submissions on the basis that there was a risk of "persecution" to the Appellant on the basis that he was an "apostate", it was equally clear that he stood to succeed if there was "discrimination" (as against persecution), that prevented him from practising his faith for fear of the state, because he would then be able to come under the protection provided by the seminal case of **HJ (Iran)**.

16. Finally, the report of Sheri Laizer had made it abundantly clear that there would be no protection for the Appellant outside the IKR in Iraq, so that if the Appellant would be treated as a "apostate" within the IKR, because of his conversion from Islam to Christianity, that left him exposed to ill-

treatment in other parts of Iraq as well, and this was clear from what Sheri Laizer had said at pages 435 to 439. The reason she gives is that, "in practical terms" there are checkpoints across the country, where the Appellant will be stopped, by both extremist Shia and Sunni forces, and be targeted, for his conversion from Islam to Christianity (see page 435).

17. In reply, Mrs Aboni submitted that the report by Dr Sheri Laizer was not specific enough, because it focused very largely on religious minorities such as the Yazidi, and then went on to speak about land seizure, before stating that the Appellant would not be able to fit into the local minority communities because he was Kurdish, but she does not give adequate reasons for why the Appellant would specifically be at risk.

No Error of Law

18. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007), such that I should set aside the decision. My reasons are as follows.

19. First, as Mr Bandegani, who has conducted this appeal in a thorough and highly efficient manner, submitted, the threshold for setting a decision below on the grounds of unreasonableness is a high one. This was made clear by LJ Brooke in **R (Iran) [2005] EWCA Civ 982**, where His Lordship stated, "it is well known that 'perversity' represents a very high hurdle" (see paragraph 11). His Lordship went on to explain that, "far too often practitioners use the word 'irrational' or 'perverse' when these epithets are completely inappropriate" (at paragraph 12). So is it the case here. The judge in this case makes it clear that the Appellant is from Kirkuk, which is a contested area, and although it is a case as the Presenting Officer pointed out, that the Appellant would be able to obtain new travel documents and thereafter a CSID card "with relative ease", the fact of his conversion to Christianity, would mean that he would be viewed as an apostate and that the individual factors relevant to him meant that he would be at risk (paragraph 21).

20. Second, Mr Bandegani is entirely right in submitting that the country guidance is fundamentally on the question of "religious minorities", and that insofar as it gives consideration to issues of "conversion" (at paragraph 5.3), these are matters that are not just as yet unresolved within the Iraqi community, but insofar as this is so, there is a very real risk to the Appellant of being persecuted. This is because the UNHCR eligibility guidelines make it clear that the constitution of Iraq, whilst requiring the Iraqi state to uphold both freedom of religion and the principles of Islam, fails to resolve the contradiction that Islamic sharia law "includes capital punishment for leaving Islam".

21. Indeed, it does not end there. This is because there is "widespread animosity towards converts from Islam and the general climate of religious intolerance" such that "the conversion of a Muslim to Christianity would likely result in ostracism and/or violence at the hands of the convert's community, tribe or family" and that many continue to believe that "apostacy from Islam is punishable by death" (paragraph 5.3.1).

22. Finally, there is evidence that the position of "apostates" is deserving of a particularised attention, in the way that is not always apparent from the country guidance. This is clear from the fact that, although paragraph 5.35 refers to a fact-finding mission report published in April 2016 by the Danish Immigration Service, which noted that, "the law discriminates with regard to conversion, as Muslims are not allowed to convert", it does not go on to elaborate upon what the position is where Muslims in Iraq do convert, beyond simply saying that there is "discrimination".

23. Thus, although there is a reference to conversion/apostacy in the "Immigration and Refugee Board of Canada covering the period 2011 – July 2014" (see paragraph 5.3.6) it does not make clear, what Mr Bandegani pointed out in his submissions, namely, that this report states that apostates "are often faced with severe persecution" (see the second page of this document). The report by the Refugee Board of Canada makes it clear that "hostility towards converts is widespread".

24. In all the circumstances, therefore, the decision of Judge Boylan-Kemp MBE cannot be said to have been one that was not open for her to reach, and having made it, it is plain that it is well-reasoned, given what is made clear at paragraph 21 of the determination.

Notice of Decision

There is no material error of law in the original judge's decision. The determination shall stand.

No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge Juss 22nd September 2018