



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2024-004728

First-tier Tribunal No: LP/01649/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 21 January 2025**

**Before**

**UPPER TRIBUNAL JUDGE HOFFMAN**  
**DEPUTY UPPER TRIBUNAL JUDGE ANZANI**

**Between**

**S.A.M.**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr W Khan, legal representative, of Fontain Solicitors

For the Respondent: Miss S Rushforth, Senior Home Office Presenting Officer

**Heard at Field House on 13 January 2025**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. The applicant, who is a citizen of Iraq, appeals with permission against the decision of First-tier Tribunal Judge Le Grys promulgated on 25 June 2024 dismissing his appeal against the respondent's decision dated 1 November 2022 refusing his protection claim.

2. The First-tier Tribunal made an order granting the appellant anonymity. No application has been made to set aside that order. While we take into account the strong public interest in open justice, we continue the anonymity order on the basis that the appellant's claim relates to a fear of persecution in his home country and, for that reason, the balance weighs in favour of protecting his identity.

## **Background**

3. The appellant claims to have left Iraq illegally in April 2014, travelling through several countries before clandestinely arriving in the UK on 22 October 2015. He claimed asylum on the same day. His claim was predicated on a purported fear of two families. The first family were said to have links to the Ba'ath party and were involved in a blood feud with the appellant's family. The second family were said to have links to ISIS and posed a risk to the appellant on account of his relationship with one of their relatives. The appellant's application was refused by the respondent on 21 April 2016.
4. The appellant exercised his right of appeal and his case was heard by First-tier Tribunal Judge Gurung-Thapa on 31 May 2016. In a decision promulgated on 21 June 2017, Judge Gurung-Thapa dismissed the appeal having found the appellant's evidence to be inconsistent and incredible. In conclusion, Judge Gurung-Thapa found the claim to be a fabrication. The appellant's appeal rights were exhausted on 13 November 2017.
5. The appellant was not, however, removed from the UK and on 20 May 2021 he submitted further representations to the respondent. The appellant continued to maintain that he could not go back to Iraq because he feared persecution by: ISIS; a family on account of a blood feud; and because he is an atheist. On 1 November 2022, the respondent accepted that the appellant was entitled to remain in the UK on Article 8 ECHR grounds but she again refused his protection claim. The appellant was granted a new right of appeal against that decision.

## **The appeal before the First-tier Tribunal**

6. The appellant's appeal was dismissed by First-tier Tribunal Plowright on 19 September 2023. However, on 16 April 2024, Deputy Upper Tribunal Judge Chapman set aside that decision and remitted the appeal to the First-tier Tribunal for a rehearing.
7. The rehearing was listed before First-tier Tribunal Judge Le Grys ("the judge") on 18 June 2024. As explained above, the judge dismissed the appeal on 25 June 2024. He was not satisfied that the appellant had provided sufficient evidence to convince him to depart from the findings made by Judge Gurung-Thapa regarding the alleged fear of ISIS. The judge was not satisfied that the group posed a risk to him either on account of his claimed relationship with the female relative or because he was a police informer. Regarding the appellant's claim to be an atheist, the judge accepted that this had been noted in Judge Gurung-Thapa's decision; however, the judge found that the appellant's evidence on this point was vague. While the judge was satisfied that the appellant was not a practicing Muslim, he did not accept the appellant was an atheist or that he had openly renounced Islam and, as a consequence, he was unlikely to face persecution on return to the Kurdistan Region of Iraq ("KRI").

### **The appeal to the Upper Tribunal**

8. The appellant was granted permission to appeal by Upper Tribunal Judge Hirst on 5 November 2024.
9. Mr Khan, on behalf of the appellant, confirmed that he would be pursuing one ground of appeal before the Upper Tribunal regarding the judge's findings on the appellant's claim to be an atheist. This ground consisted of two elements: (i) that having found that the appellant did not practice any religion, the judge made a material error of law by proceeding to find that he was not an atheist; and (ii) that the judge failed to adequately assess the risk posed to the appellant in Iraq on account of him not practicing any religion.
10. We heard submissions from both parties and, at the end of the hearing, we reserved our decision.

### **Findings - Error of Law**

11. Mr Khan argued his case with conviction but, after careful consideration, we are satisfied that the judge's decision is not vitiated by a material error of law.
12. The judge's findings in respect of the appellant's claim to be an atheist are set out at [38] to [44] of the decision. At [38], the judge took into account that while the appellant's claimed atheism was noted in the 2017 First-tier Tribunal decision, Judge Gurung-Thapa had not made any specific findings on the point which, at that time, was included as part of the appellant's claim to have been threatened by ISIS. The judge then goes on at [39] to note that the appellant's atheism was not mentioned in his witness statement dated 1 December 2020 or his partner's witness statement dated 8 October 2020. The judge found that the failure to mention this point in the witness statements suggested that the appellant "did not consider it to be a significant factor at that time".
13. At [40], the judge took into account the appellant's evidence in his statement dated 17 March 2023 that he wished to "live openly as an atheist in Iraq". However, the judge found that the appellant had failed to provide any further detail "as to what he means by this; for example, how he is "living openly" as an atheist, or why he considers himself to be specifically an atheist rather than someone who is not practicing their religion". The judge found the appellant's "vagueness" to undermine his credibility.
14. The judge then went on to find at [41] that, taking the evidence in the round, he was satisfied that the appellant "is not currently practicing any religion". However, at [42], the judge also found that the appellant is not an atheist and had not openly renounced Islam. In making those findings, the judge took into account that there was "little evidence to this effect beyond the briefest of assertions by the Appellant and his partner"; that it had not been raised as a specific ground of appeal in 2017; the absence of any reference to it in the 2020 witness statements; and what was "little more than a passing reference" in his 2023 witness statement. The judge found that that the appellant's "non-practicing of religion is a relatively minor aspect of his personality, and certainly not one that is so developed as to amount to an actual belief or philosophical

viewpoint". Therefore, having taken the appellant's claim to be an atheist in the round with "the significant adverse credibility findings previously made", the judge found that the appellant had "exaggerated his non-practicing status so as to include beliefs that he does not in fact hold, in a deliberate effort to bolster his claim".

15. Regarding the appellant's written evidence, Mr Khan submitted that the appellant had in fact provided some detail about his atheist beliefs at paragraphs 23 to 28 of his witness statement dated 17 March 2023. In those paragraphs, the appellant says as follows:

"23) I am an atheist. I have told the truth. I was threatened in Iraq as a result.

24) The Home Office are right to accept that outside the KRI there is a risk of arrest for openly admitting to be an atheist.

25) The Home Office are also right to accept that there is a risk that I will be physically threatened and rejected by my family as a result of me being an atheist.

26) If I am returned to any part of Iraq, I would want to live my life openly as an atheist, as I do in the United Kingdom. I will be unable to do so without being persecuted.

27) I will also be harmed by [the family of the woman I was in a relationship with] as a result of me being an Atheist [sic].

28) I have told the truth."

16. We respectfully disagree with Mr Khan's suggestion that the paragraphs quoted above provide any real detail about how the appellant lives "openly as an atheist" in the UK. We are therefore satisfied that it was open to the judge to find that only passing reference had been made to this.

17. Having made the findings at [42], at [43] the judge went on to consider whether the appellant would be at risk on return as a result of him not practicing a religion. The judge took into account the appellant's evidence that his brother in Iraq "also does not practice any religion, and...has not experienced any difficulties as a result", which the judge found was

"consistent with the objective evidence, quoted in the refusal letter, that there have been no recent examples of prosecution of atheists in the KRI, and that there is more freedom of expression there [than the rest of the country] with regards to religious beliefs. While an individual might be at risk of persecution were they to openly admit to being an atheist or to renounce Islam, the evidence does not support the conclusion that the Appellant would be at risk for being non-religious, in the same manner as his brother. He will therefore be able to continue with his private non-practicing status, just as he currently does."

18. Mr Khan argued that given the judge accepted that the appellant is not practicing any religion, it is difficult to understand the rationale as to why the judge did not therefore accept that the appellant is an atheist. While we have some sympathy with that argument, ultimately, we find that little rests on the distinction. Whether the appellant does not practice Islam because he is not interested in religion, or is agnostic, or because he does not believe in a god, it is clear from reading [38] to [42] that the judge found this to be a minor aspect of the appellant's personality. In making that finding, the judge took into account that beyond a brief assertion by the appellant that he was an atheist, he had

failed to advance any evidence about how he “lived openly” as an atheist in the UK. As we have already explained, that finding was reasonably open to the judge on the evidence before him.

19. The judge also took into account the fact that the appellant had previously sought to fabricate other reasons why he could not return to Iraq, and he was therefore reasonably entitled to find that the appellant had sought to exaggerate his position on religion. In the circumstances, it was open to the judge to conclude that the appellant was simply a person who did not practice any religion and that his beliefs (or lack thereof) did not extend beyond that. Having made that finding, the judge was also entitled to find that the appellant was unlikely to draw attention to himself in the KRI so as to face a real risk of persecution. In doing so, it was open to the judge to take into account the appellant’s own evidence that his brother did not face any problems in Iraq on account of the fact that he too did not practice any religion.
20. Furthermore, as the judge explained at [43], in making his findings, he also took into account passages relating to atheists taken from the Home Office’s Country Policy Information Note (“CPIN”) Iraq: Religious Minorities (July 2021) quoted in the refusal letter. The CPIN said at para 7.1.1 that although atheism is rare in Iraq, it is reported to be on the rise; and that while there are no laws prohibiting atheism, there were some instances of atheists being prosecuted for “desecration of religions” and related charges; and societal tolerance for it is very limited. Para 7.1.2 said that “State actors typically equate atheism with blasphemy” and atheists can face threats. Importantly, the paragraph also said that while “persons who openly admit they are not religious would risk arrest in, for example, Baghdad and the South, where in the KRI there would be more freedom of expression with regards to religious beliefs” because “Kurds primarily identify themselves in terms of their ethnicity and not their religious affiliation”. As the judge noted, that state of affairs was supported by the appellant’s evidence that his brother did not face any problems in the KRI on account of his lack of religious beliefs. We are satisfied that the judge was entitled to place weight on the contents of the CPIN in reaching his conclusion.
21. We are satisfied that the judge gave adequate reasons for all of his findings.

### **Conclusion - Error of Law**

22. For the above reasons, we are satisfied that the judge did not make a material error of law in finding that the appellant was a person who did not practice any religion as opposed to being an atheist. Furthermore, we are satisfied that the judge did have proper regard to the background country information when finding that the appellant is unlikely to face persecutory treatment on return to the KRI on account of him not practicing any religion.

### **Notice of Decision**

**There is no error of law in the decision of the First-tier Tribunal.**

**The appeal is dismissed.**

**M R Hoffman**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

16<sup>th</sup> January 2025