



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04999/2017

THE IMMIGRATION ACTS

Heard at Field House
On 31 May 2018

Decision & Reasons Promulgated
On 06 June 2018

Before

LORD UIST SITTING AS A JUDGE OF THE UPPER TRIBUNAL
UPPER TRIBUNAL JUDGE FREEMAN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

DEAN RAMSEY
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr Duffy, Home Office Presenting Officer
For the Respondent: Mr Hawkin, of Counsel

DECISION AND REASONS

1. Dean Ramsay (the claimant) is an Iraqi national who was born on 18 September 1959. He arrived in the United Kingdom on 28 September 1978 on a student visa, which was renewed annually until 1984. On 12 August 1992 he changed his name from Ridah Sadik Mohammed to Dean Mazen Ramsay. On 4 February 1989 he made an application to be naturalised as a British citizen. It was refused on 18 January 2001 as there was no record that his tax and national insurance contributions were up-to-date. On 21 July 2009 his representatives wrote to the Home Office requesting the issue of a document verifying his status. On 20 November 2009 the Home Office replied to the

effect that his status could not be verified. On 18 March 2011 he was convicted of the offence of “damaging property being reckless as to whether life was endangered” in September 2010 and sentenced to seven years imprisonment. The offence involved his setting fire to a flat in a residential building that had been converted into a number of flats, all of which were occupied by families, including children. By good fortune all of the occupants of the building managed to escape the fire without coming to any harm, but they were nevertheless exposed to the real risk of serious harm or death. Moreover, the fire caused extensive damage to the building and a neighbouring property. The sentencing judge remarked that it was a major incident in which the actions of the claimant resulted in an extremely high financial cost to the authorities, the landlord, and, relative to their circumstances, the occupants of the property. On 13 May 2014 a deportation order was served on the claimant. His appeal to the First-tier Tribunal (FTT) against the making of the deportation order was dismissed on 27 November 2014. He was granted permission to appeal to the Upper Tribunal but his appeal was dismissed on 17 April 2015. Permission to appeal against that decision to the Court of Appeal was refused on 26 May 2015. His appeal rights became exhausted on 16 May 2015. Thereafter the Secretary of State refused his protection and human rights claim on 12 May 2017. On 17 January 2018 First-tier Tribunal Judge (FTTJ) Bartlett allowed an appeal against that decision. The Secretary of State now appeals against the decision of FTTJ Bartlett.

2. In her decision FTTJ Bartlett found that the claimant has been an atheist since at least 1992, when he changed his name by deed poll, and that, not only was he an atheist, but he expressed his atheist views, which were an important part of his identity. He had demonstrated a consistent history of going out of his way to express his views and to take issue with those with religious beliefs, as demonstrated by his actions at Speakers’ Corner and his actions in prison. The FTTJ accepted the claimant’s evidence that atheism was a core part of his identity and noted that he had changed his name over 25 years ago, long before any issues about deportation or his immigration status arose. The FTTJ further accepted that the reason for changing his name was to distance himself from his past and so that he did not have a religious name, which he felt contradicted how he felt about himself. Proceeding on the basis that the claimant would have little or no family support if he returned to Baghdad, the FTTJ went on to consider whether, as an atheist returning to Iraq, he would be at real risk of serious harm. She concluded, for the ten separate reasons set out in detail at paragraph 44 of her decision, that the claimant would be at real risk of serious harm amounting to persecution if he returned to Iraq. She found that, if the claimant returned to Iraq, he would not suppress his atheist beliefs, that he would want to express them, and that therefore, pursuant to *HJ (Iran)* [2010] UKSC 31 he could not be required to pretend that he is not an atheist and to adopt religious behaviour to protect himself. She also found that the real risk of serious harm, if not death, which would face him if he were to return to Iraq was a very compelling reason going beyond the exceptions set out in section 117 of the Nationality, Immigration and Asylum Act 2000 and beyond the considerations set out in paragraphs 399 and 399A of the immigration rules. She found that exception 1 of section 33 of the UK Borders Act 2007 applied and that the claim under Articles 3 and 8 outside the immigration rules and for humanitarian protection succeeded.

3. In presenting the appeal Mr Duffy for the Secretary of State conceded that the expert evidence provided to the FTTJ did not add anything to the refusal letter, in which it had been conceded that an outspoken atheist would be at risk on return to Iraq. He submitted that the FTTJ had not made adequate findings about how the claimant would behave on his return to Iraq. The claimant had expressed his atheist views in the past in the UK, but would he challenge people's religious views if returned to Iraq? It was submitted that the FTTJ had failed to give clear reasons as to why the objective background evidence relied on by the claimant demonstrated that he would be at real risk on the basis of being an atheist.
4. In response Mr Hawkin for the claimant submitted that the decision of FTTJ Bartlett was a thoughtful, careful and balanced one and that her findings and conclusions were clearly open to her. The Upper Tribunal should be extremely slow to interfere with the decision of the FTT, and should not do so merely because another view might have been taken by another judge or by itself. The Secretary of State's grounds of appeal disclosed no material errors of law in the decision of the FTTJ and amounted to no more than a disagreement with her findings and conclusions in an attempt to reargue the issues already decided by her. She had dealt entirely properly at paragraph 41 with the issue of the claimant's atheism and the resulting risk to him on return to Iraq. She had clearly dealt with the submissions made by the presenting officer about the expert evidence, as recorded at paragraph 20(v)-(vi) of her decision. She had given very clear reasons at paragraph 44(i)-(x) of her decision, covering a whole array of evidence, not just that of the experts, why the claimant would be at risk on return to Iraq as an atheist. As she noted at paragraph 44(iv), the Secretary of State's own decision letter accepted that outspoken atheists might face problems with the Iraqi authorities. She had summarised at paragraphs 8-11 of her decision the claimant's own evidence regarding his atheist beliefs, including why he changed his name in 1992. In light of that evidence she was fully entitled to find at paragraph 44(iv) that the appellant was "an outspoken atheist" with a "belligerent and uncompromising attitude" and at paragraph 44(x) that he would be treated as an apostate in Iraq, putting him at real risk of persecution. She was also entitled to find at paragraph 45 that he would not suppress his atheist beliefs and that he would want to express them. She had clearly given proper consideration to the public interest when considering Article 8. She explicitly stated at paragraph 53 that she had to give considerable weight to the public interest in the claimant's deportation as provided for in the legislation.
5. Having considered the submissions made we have reached the conclusion that there is no substance in this appeal by the Secretary of State. We do not detect any error of law in the FTTJ's consideration of the evidence or in her reasoning. The persuasive submissions on behalf of the claimant must be sustained. The decision which the FTTJ reached was one which was clearly open to her on the evidence which she accepted. We agree with Mr Hawkin that her decision was a thoughtful, careful and balanced one. Paragraph 44, in particular, sets out cogent reasons for her finding that on his return to Iraq the claimant would be at real risk of serious harm amounting to persecution. There is no basis upon which we could disturb that finding. Further, she clearly had proper regard to the public interest in the claimant's deportation when carrying out the balancing exercise under Article 8. The Secretary of State's appeal must therefore fail.

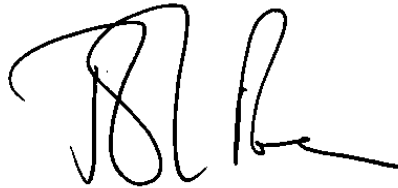
Notice of Decision

The appeal is dismissed on humanitarian protection and human rights grounds.

No anonymity direction is made.

Appeal dismissed

(Written by Lord Uist, and signed by me in his absence)

A handwritten signature in black ink, appearing to be 'JLU', written in a cursive style.

(a judge of the Upper Tribunal)
Dated 05 June 2018