



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09501/2016

THE IMMIGRATION ACTS

Heard at Liverpool
On 27th November 2017

Decision & Reason Promulgated
On 18th January 2018

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

ZM
(anonymity direction made)

Appellant

And

Secretary of State for the Home Department

Respondent

For the Appellant: Mr Rosemarine, Counsel instructed by Direct Access
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Iraq, of Kurdish ethnicity, born in 1990. He appeals with permission¹ the decision of the First-tier Tribunal (Judge Spencer) to dismiss his human rights & protection appeals.

¹ Permission was granted by Designated First-tier Tribunal Judge Shaerf on the 26th April 2017

Anonymity

2. The Appellant has made a claim for international protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Background and Matters in Issue

3. The basis of the Appellant’s claim was that he is an apostate from Islam. When he claimed asylum in 2016 he told officers that he had started to question Islam when he was a child, and that he had thought deeply about the matter, extensively reading the Qur’an and researching religion generally. The Appellant explained that although Iraq is a very religious country, it is easy to doubt religion where so many people are being killed in its name. His father had thrown him out when he was approximately 17 years old but had let him back in after the Appellant had apologised and (falsely) told him that he would start praying again.
4. Once at university the Appellant’s doubts led him to get into arguments with fellow students, and lecturers. He gradually became ostracised as people started to realise that he was no longer a Muslim. In October 2015 the Appellant was introduced by a friend, H, to a group called ‘Love of Judaism’, described in the evidence as a group promoting friendship between Kurds and Israelis, and the right of Jewish Kurds to be able to return to the region. The Appellant wanted to support this group because he believed that Jewish people should be able to live in Kurdistan if they wished – this aim had a particular resonance for the Appellant because his own maternal grandfather had been Jewish. His mother had been subjected to prejudice because of this and the Appellant wanted to combat such bigotry.
5. The Appellant states that he left Iraq because he started receiving threats over the telephone, and because in December 2015 his friend H disappeared. On the [] December 2015 the Appellant was at his girlfriend’s house when he received a call from his sister telling him that their house was being raided. Three men had come and searched the Appellant’s room. They took his laptop and papers.

They asked how long the Appellant had been helping Jews. His brother was attacked and they set fire to the Appellant's room. Immediately after this the Appellant was again threatened over the phone. He left Kurdistan with the assistance of his uncle.

6. The Appellant claims that after he arrived in the UK his sister told him that the authorities had found H's body in a river, and it was said that he had drowned. The Appellant believes that H was murdered. He now fears those who have threatened him (whom he identifies as Islamic extremists) and his own father (whom he believes may kill him himself as an act of 'honour').
7. The Respondent did not believe that the Appellant was an apostate, or that he had experienced any problems as a result of his beliefs on religion in Iraq. The entire claim was rejected for want of credibility and protection was refused.
8. When the matter came before the First-tier Tribunal the Appellant relied on his own evidence, as set out in his screening and asylum interviews, and his witness statements. He further relied on the following additional material:
 - i) A letter dated 10th December 2016 from Moshe IZIT, Secretary of 'Love of Judaism'. The letter was emailed to the Appellant's former solicitor directly in response to contact from her. Mr IZIT states that the Appellant has been a member of his organisation since October 2015. He was one of the members they have recruited in Kurdistan, with the aim of discussing Judaism with other Kurds and ascertaining the will of the Kurdish people to accept Judaism returning to their country. Mr IZIT understands that the Appellant was threatened by an unknown terrorist group and believes that if he were to return to Kurdistan his life may be in danger. Mr IZIT confirms that other members of the organisation have been killed, for example [H].
 - ii) Membership card issued to the Appellant by Love of Judaism;
 - iii) Email exchange between 'organisation staff' and the Appellant's former solicitor in which they answer her questions about the group, the Appellant and H via an email address '[]@gmail.com';
 - iv) A reference letter written by one of the Appellant's lecturers at [] University, [FM], []. The reference is undated but bears two telephone numbers and an email address. [FM] states that the Appellant is a well-educated student who was liked by "almost all" students and teachers. The reference was emailed directly from [FM] to Mr Rosemarine, and the relevant emails were reproduced in the bundle;

- v) Email from the Appellant's sister addressed to the Appellant's former solicitor in which she gives her version of events including her account of returning to her family home on the night of [] December 2015 to find her house had been raided and that the men in question had beaten her brother and set fire to the Appellant's bedroom. She states that her father had become angry, believing the attack to have been perpetrated by the family of the Appellant's girlfriend (upon discovery of the relationship), but when he was told what the men had said about the Appellant's work with Jews he became very aggressive and threatened the Appellant himself, calling him a 'Devil'. This document is provided in the original Arabic with certified translation.
- vi) A letter from the Appellant's brother explaining how on the night of the [] December 2015 he was confronted by three armed and masked men at his front door. They pointed a gun at him and told him to stay quiet. They asked where the Appellant was and when he said he did not know he was hit in the face with the butt of a gun. One went to check the Appellant's room whilst the other two questioned him. They beat him and told him that his brother was working with Jews. They ransacked the room and set fire to it before they left. Three pictures are attached showing a room with what appears to be fire damage. This document is provided in the original Arabic with certified translation.
- vii) A letter from a man who identifies himself as the Appellant's uncle confirming *inter alia* that the Appellant had contacted him and asked him to help him leave Iraq, which he had done. This document is provided in the original Arabic with certified translation.
- viii) A medical report dated [] December 2015 issued by the A&E at [] Hospital stating that a person named [the Appellant's brother's name] was treated there for a wound to his nose, two wounds to his head, cyanosis on the left eye, and cyanosis on the left side of chest. The cause of damage is recorded as "forced violent action from external source". This document is provided in the original Arabic with certified translation.
- ix) Country background information including an article about the editor of a pro-Israeli magazine who was kidnapped in Kurdistan in 2012, and then spent 3 years in an Iranian jail before being released.

9. The First-tier Tribunal found that the Appellant had given a detailed account throughout his claim, and that his oral evidence had generally been consistent with the evidence he had previously given in his witness statements and interviews. The Tribunal found however, that in respect of certain matters the account was not supported by the country background material. In particular the Tribunal adopted a point made in the 'reasons for refusal letter': the objective evidence on Iraq was that individuals who openly declare that they have left Islam are subjected to extreme violence, whereas it was the Appellant's evidence that he had been only subjected to verbal abuse and threats. The Tribunal found the glowing reference provided by the Appellant's lecturer to be inconsistent with his claim that he became known for his atheistic views; it was apparent from the man's name that he is a Muslim, and the Tribunal did not consider it credible that he would have provided that reference were the claim now made true. The Tribunal further considered there to be inconsistency in the Appellant's claim (at his screening interview) that he had been threatened by Daesh, and his evidence that he did not know the identity of his tormentors. In respect of the various items of corroborating evidence, the Tribunal found that it could attach "no weight" to them because the originals were not submitted and/or their source was unclear; the emails, for instance, could have been sent by anyone who had set up an account in those names. Finally the Tribunal found that the Appellant's credibility was damaged by his failure to claim asylum in a safe third country en route to the UK: section 8 Asylum and Immigration (Treatment of Claimants etc) Act 2004 applied. Overall the Tribunal concluded that the Appellant's credibility was "severely damaged" and the entire claim is rejected. The appeal is thereby dismissed.

The Appellant's Challenge

10. The written grounds of appeal are difficult to follow but having heard the submissions of Mr Rosemarine they can be distilled to the following complaints. It is submitted that the determination is flawed for these errors of law:

- i) Failure to make clear findings of fact on material issues.

The Judge fails to make a clear reasoned finding on whether or not the Appellant is in fact an atheist, and thereby an apostate from Islam.

- ii) Failure to take relevant evidence into account/place weight on relevant evidence.

The Appellant had relied upon witness statements set out in emails sent from his brother, sister, and uncle. The Tribunal

mentions these documents at paragraph 50 of the determination where it states that they can be given “no weight”. This is submitted to be *Wednesbury* unreasonable, given the consistency between the detailed accounts in the emails, the account given by the Appellant and supported by medical evidence, and the fact that the emails themselves were sent from email accounts which clearly identified the sender. The identity documents of each witness were supplied.

The Appellant had further submitted country background evidence specifically going to the risk faced by atheists/associate of Jews/apostates. None of that evidence was assessed when the Judge came to evaluate the credibility of the account.

The Appellant submitted a medical report relating to an attack on his brother. At paragraph 51 of the determination the Tribunal states that “no weight” can be attached to it because it appeared only as a “poor quality photocopy”. It is submitted that this was not a lawful approach. The medical report was properly translated, its Sorani version appeared on headed paper with full contact details provided and it bore a stamp from the reporting physician.

The evidence from ‘Love of Judaism’ is similarly afforded no weight at all when it is considered at paragraph 46 of the determination. This evidence included a membership card, and a letter. It is submitted that it was perverse to attach no weight to the letter on the grounds that it was not an original, when it was clearly sent directly from the organisation to the Appellant’s then lawyers. As an email it is an ‘original’.

iii) Perversity

The Judge rejects the Appellant’s claim *inter alia* on the grounds that he would have suffered significantly greater harm than he claims to have done had he openly declared his atheism in university lectures as he claims. This is submitted to be perverse reasoning because a) the objective country material does not state that *all* atheists will *always* be subjected to serious harm and b) because it is the Appellant’s case that he was in fact targeted for violence. To reject an internally consistent and detailed account on the basis of a misreading of the country background material is a serious error of law.

The ‘glowing reference’ from the university professor could not rationally be taken as evidence *against* the Appellant’s case. It

was written by a lecturer who liked the Appellant for him to use as an employment/education reference. The Appellant had nowhere claimed that this lecturer had been hostile to him.

The Secretary of State for the Home Department's Response

11. I am grateful to Mr McVeety for the robust but realistic approach he took in his submissions. He accepted that if the claims were true, the Appellant would be a refugee. He also accepted that the Tribunal may have attached undue weight to the alleged discrepancy between the Appellant's evidence that he did not know the identity of his persecutors and elsewhere describing them as 'Daesh'; he accepted that that term may have been used as a generic reference to Islamic extremists. He did not however accept that the First-tier Tribunal had erred in law. The reasons it gave for rejecting the account were good ones. Mr McVeety did not accept that the Judge had failed to make findings on risk on return. The Judge makes a finding that the Appellant is not an atheist at paragraph 57 of the determination. He looked at the evidence holistically and finding the Appellant not to be credible, rejected the entire account. He specifically takes a *Tanveer Ahmed* approach to the documents. That was an approach lawfully open to him. Perversity is a high test and here it is not met. It is correct to say that the Tribunal did not address the country background material, but this omission cannot be material: it was accepted that if the claim were true it would be made out. The background material was not capable of assisting the Appellant's case any further. As to the submission that it was perverse to discount the evidence of [FM] because his middle name was 'Ahmed', Mr McVeety pointed out that the Judge had not plucked this notion out of thin air: the Appellant had said in his statement that this had been part of his own name, but he had renounced it because it is associated with Islam.

Error of Law: Discussion and Findings

12. The weight to be attached to individual items of evidence is classically a matter for the judge. The Upper Tribunal can, and will, only interfere with findings in respect of weight where they are flawed by a demonstrable error of law. In this case, the First-tier Tribunal has decided to attach *no* weight at all to various items of potentially corroborative evidence. Whilst this is perhaps surprising, is it an error of law?
13. I accept Mr McVeety's submissions that the Tribunal was entitled to limit the weight that could be placed on the statements from the Appellant's family members given that they were not present to have their evidence tested. The reason given however for deciding to place *no* weight at all on the documents was that the email accounts could not be "verified"; the Tribunal could not therefore be satisfied that they were in fact sent from the Appellant's relatives.

In making that finding the Tribunal appears to have given no consideration to the fact that these statements were supported by the photocopied identity documents of each witness (which in the case of his siblings showed shared parentage), and by an email chain demonstrating how they were sent directly to the Appellant's solicitor, with the sending email addresses each corresponding to the sender's name and identity. Further each statement bears the (Iraqi) mobile telephone number of the sender. Ultimately it may not be possible, from the UK, to "verify", for instance, that the email address associated with the Appellant's sister is one registered in Iraqi Kurdistan, or that the IP address corresponds to her home. Considered globally however, the fact that the letters were supported by these additional documents was plainly relevant. At a minimum it made it less likely that these statements had simply been typed out by the Appellant. I find that the failure to consider that supporting material was a significant omission.

14. Looking at the content of the letters I am further concerned that the Tribunal has failed to consider the totality of the evidence. The Appellant's sister, brother, and uncle all gave very detailed accounts, from their own perspectives, which were arguably entirely consistent with his own. That was a matter capable of attracting *some* weight, albeit diminished because of the absence of the witnesses. In those circumstances I cannot be satisfied that it was reasonably open to the Tribunal to attach *no* weight to this material.
15. I am further satisfied that the Tribunal erred in its approach to the evidence from 'Love of Judaism'. This material was rejected on the grounds that it was not 'original'. This reasoning is hard to understand, given that the letters were communicated by email. Again, the chain of communication, via the Appellant's solicitors, had been demonstrated.
16. There was some debate, at the hearing before me, about the approach taken to the letter of reference from the appellant's former lecturer, [FM]. Mr Rosemarine took great exception to the Tribunal's reasoning on this point. The Tribunal, noting that the gentleman's middle name was Ahmed, deduced that he must be a Muslim. Since he did not use the letter to denounce the Appellant as an atheist, the Tribunal concluded that the Appellant's claims to that effect must be untrue. Mr Rosemarine contended that this approach was perverse, not least because of the assumption as to the gentleman's religious adherence. In respect of that latter point, Mr McVeety pointed out that it was the Appellant himself who associated the name Ahmed with Islam, claiming at paragraph 66 of his own statement that he had denounced that name because of its religious connotations. Mr Rosemarine further argued that there was no justification for the Tribunal's assumption that [FM] would even be aware of the Appellant's difficulties with other students.
17. Taken at its highest, the letter of reference added little to the Appellant's case. Although [FM] does note that the Appellant was well liked by "almost" all

students, and it may be that something can be inferred from that, the letter contains no positive confirmation of the Appellant's central claim, namely that he is an atheist. To that extent I agree with Mr McVeety that it is of only peripheral importance. I am not, however satisfied that it was reasonably open to the Tribunal, for the reasons that it gives, to weigh the letter so heavily *against* the Appellant. The reasoning is as follows: Muslims do not like atheists, this man is a Muslim, and therefore the Appellant cannot be an atheist. I am satisfied that this reasoning is irrational. It fails to take account of the following matters. First, the fact that [FM]'s parents chose to name him Ahmed gives no indication at all of his own religious beliefs; a person named David cannot automatically be assumed to be a practising Jew, much less a Peter could be assumed to be Christian. Second, there was nothing in the evidence to indicate that this particular member of the faculty was aware of the Appellant's religious beliefs: the determination finds this to be the case because he is the 'Dean'. That is an error of fact. It is apparent from [FM]'s letter and attached CV that he is not currently a Dean, he having only held that position, at a different institution, in 2010. It further assumes that if he was aware of the difficulties that the Appellant claims to have had that he would have had a view about them.

18. That brings me to the next ground of appeal. Mr Rosemarine's central complaint is that the Tribunal adopted the Respondent's flawed logic when examining the Appellant's historical account. That logic is set out at paragraph 22 of the refusal letter and at paragraph 36 of the determination. Reference is made to country background material which gives examples of apostates from Islam being subjected to serious physical harm in Iraq: since the Appellant does not claim to have been harmed in this way himself, his claim must be false. Mr Rosemarine objects to this reasoning. The objective material does not state that anyone who raises any question about Islam is immediately subjected to serious harm by any Iraqi who happens to become aware of it. It indicates that there have been instances where people have been harmed. In refusing this claim on the ground that the Appellant has not *yet* been attacked is perverse and contrary to the Refugee Convention.
19. I am satisfied that this ground is made out. It was not the Appellant's case that he had openly denounced Islam in the sense that he had stood on a soapbox on campus and declared his lack of faith. He had given detailed examples of the kind of conversations that he had raised at university which made people distrust and ostracise him. One was when he challenged a lecturer who was recommending the use of *siwak* over toothpaste. *Siwak* is a kind of twig that the Prophet Muhammad had habitually used to clean his teeth. Its use is therefore *sunna*. In challenging this notion the Appellant would certainly have attracted some opprobrium, but the objective material falls well short of establishing that anyone who departs from the *sunna* is immediately killed or subjected to physical assault. It was part of the Appellant's case that his views on individual subjects caused other students to be hostile to him, but he did not claim that it

was his view on *siwak* that placed his life at risk. Rather it was his involvement in the 'Love of Judaism' organisation and his association with H which attracted the attention of extremists who were prepared to take more drastic action than shouting at the Appellant in the street.

20. I am satisfied, in light of the findings that I have made, that the determination of the First-tier Tribunal must be set aside. That is because the errors that the Appellant has established go to the heart of the appeal.

The Re-Made Decision

21. The burden of proof lies on the Appellant who must demonstrate to a standard of reasonable likelihood that he has a well-founded fear of persecution in Iran today. The reason for the feared persecution would be 'religious belief' or rather a lack of it. In the context of Islamic extremism in Iraq it might also be said to be imputed political opinion.

The Evidence

22. The historical factual basis of the Appellant's case is as follows:

- i) He was born a Muslim to a family of mixed religious heritage, his maternal grandfather having been Jewish;
- ii) He ceased to consider himself a Muslim some 8-9 years ago;
- iii) The Appellant has personally encountered discrimination and harassment falling short of 'serious harm' as a result of views he has openly expressed in Iraq (including being temporarily evicted by his father, being abused and ostracised by fellow students);
- iv) The Appellant was a member of an organisation called 'Love of Judaism' whilst in Iraq;
- v) The Appellant's family members have suffered direct serious harm as a result of his views. His brother was assaulted and the family home was raided, ransacked and set on fire;
- vi) The Appellant's friend is believed to have suffered direct serious harm as a result of views he shared with the Appellant (H went missing and was found drowned, believed to have been murdered);

- vii) The Appellant has received direct threats to his life and person, by way of telephone and to his family members.

23. To this historical narrative the Appellant adds the following matters:

- viii) Since his arrival in the UK he has continued to hold, and has developed, his atheistic views.

24. In addition to the documents summarised at paragraph 7 above, the Appellant relies on the following:

- i) His membership card for the British Humanist Association.
- ii) A letter of support from Maryam Namazie, spokesperson for the Council of Ex-Muslims of Britain (plus the Wikipedia entries for Ms Namazie and her organisation).
- iii) A statement by Mr Guy Otten, Chair of Greater Manchester Humanists, dated 30th October 2017. Mr Otten confirms that the appellant is known to him as an attendee of meetings of the humanist association in Stockport and Greater Manchester. He and Mr Otten discussed the plight of the Yezidis in the Levant, who were being attacked by Daesh. Mr Otten's daughter is a journalist who has written a book about the Yezidis and the Appellant was very concerned about the fate of this minority group. Since that initial meeting the Appellant has enrolled on a course run by the Humanists at Friends House in Manchester. Mr Otten believes the Appellant to be sincere in his statement that he is an atheist.
- iv) A statement dated 30th October 2017 by Louise Courtney, also a member of the Humanist Association. She confirms that she has seen the Appellant at various meetings and has held discussions with him about his beliefs. She describes him as a close friend and she believes him to be an atheist.
- v) A statement dated 2nd November 2017 by Robin Grinter, Vice Chair of the Greater Manchester Humanists, who facilitated the seven week course attended by the Appellant (and referred to by Mr Otten). Mr Grinter writes that during the course the Appellant offered illuminating personal insights into key elements of humanism, and made carefully considered and perceptive contributions which were valued by other participants.

- vi) A death certificate for the Appellant's friend H, said to have been obtained by the Appellant's brother and sent to him in the UK. It states that the cause of death was drowning, with signs of beating to the body. This document is produced in the original Arabic with an English translation.
- vii) A statement by Rabbi Arnold Saunders, Rabbi of the Higher Crumpsall and Higher Broughton Hebrew Congregation, dated 29th October 2017. Rabbi Saunders was asked to comment on the material produced in this appeal from the organisation 'Love of Judaism', in particular the form of Hebrew used on the Appellant's membership card and the supporting letters. Rabbi Saunders looks at three Hebrew terms that appear on those documents. He states that all are modern Israeli Hebrew terms only. They are not, to the best of his knowledge, found before Ben Yehuda's creation of modern Hebrew. The phrase 'Haver Ha'amut' is translated as 'member of the organisation'. Rabbi Saunders states that this use of the legal term 'amut' (to mean organisation) would generally only be by an Israeli. It therefore appears to him highly likely - he also uses the phrase 'beyond doubt' - that the materials, or rather the Hebrew text that appears on them, was written by an Israeli.

25. The country background material consists in the main of articles in the press. As Mr McVeety points out, they are of limited relevance given the Respondent's concession that a grant of asylum would have to be made if the factual claims are made out. I think it important, however, to note two themes that emerge from these articles.

26. The first is that religious freedom and pluralism in Kurdistan are under threat from Islamic extremism. For instance, an article in the online Kurdish newspaper Rudaw dated 2nd May 2017 is concerned with death threats made by an Imam against young Muslims who had been converting to Zoroastrianism in protest against Daesh. An information request response produced by the Immigration and Refugee Board of Canada on the 2nd September 2016 reports that there are many social media platforms catering for non-believers in Iraq but they must keep their membership lists secret in order to protect users' identities. Writers who criticise, or who are perceived to criticise, Islamic values have had fatwas issued against them by conservative clerics and there is a growing fear of being denounced as a 'blasphemer', particularly in areas where there are armed militants.

27. The second is that there is a fear of Israeli infiltration and influence in Kurdish areas. There are documented instances of Mossad operating in Iraq, for instance in a 2006 report by the US State Department suggesting that Mossad was responsible for the assassination of 550+ scientists and academics in Iraq, and in

a BBC article from September 2006 on Israeli military training to Kurdish forces. There are also a number of articles reporting on Iranian paranoia about Israel, Jewish organisations and individuals buying or appropriating land in Kurdistan. The Jewish blogger 'Elder of Zion' wrote in September 2016 about reports in the Arab media to the effect that the Israelis are particularly interested in the shrine of the Prophet Nahum in Qush, the shrine to the Prophet Jonah in Mosul and the tomb of the Prophet Daniel in Kirkuk. He connects these reports to conspiracy theories concerning the foundation of 'Greater Israel'. An article from the Jerusalem Post in November 2012 reports on an individual being sentenced to death in Iran on charges of spying in Kurdistan for the Israeli government.

Discussion and Findings

28. I have read and taken account of the Respondent's reasons for refusal letter dated 26 August 2016. I note therein (at paragraph 23) the Respondent's acknowledgement of the Appellant's explanation as to why he left Islam, the treatment and problems that he faced as a result. I have read the Appellant's lengthy witness statements and interviews myself. I find that he has given a detailed and cogent explanation of his emotional journey from being a Muslim child to an atheist adult. The catalyst for his investigations was the killing of a Yezidi girl by her family, who were 'dishonoured' by her relationship with a Muslim boy. This made the young Appellant consider the meaning and point of religious belief. As he grew up, and witnessed numerous killings in the name of religion in his country, he was increasingly led to the view that it causes more problems than it solves.
29. The primary reason given by the Respondent for disbelieving the Appellant's account, is as discussed above, that his account of being humiliated and alone was inconsistent with the country background material that apostates are killed in Iraq. I have read and considered carefully the Appellant's account of his days at university. He did not at any stage claim to have openly denounced Islam, nor any of Islam's core beliefs. Had he done so, then perhaps the Respondent's reasoning would have been more persuasive. However, the Appellant's activities appear to have been confined to raising questions on individual issues such as the use of *siwak*. Whilst I cannot rule out the possibility that a very fervent Muslim may have taken action against the Appellant in the form of physical violence for expressing such views, the absence of such an attack does not render the account inherently incredible. Overall I found the Appellant's account of his days at university, and his atheist beliefs to be consistent, detailed and credible.
30. The Appellant's involvement with 'Love of Judaism' was, in this context, harder to understand. If he had become a fervent atheist why was he associating himself with another religious faith? The answer is well explained by the Appellant at question 52 the asylum interview record. He explains that he grew

up seeing his mother insulted because of her Jewish heritage, and that he came to see an affinity between the Jewish people and the Kurds: they are both peoples from the Middle East who have suffered and faced persecution. The Appellant states that his affiliation to 'Love of Judaism' was not borne of any desire to convert to that religion, rather it was an expression of his desire to support the rights of all faiths and all religions in Kurdistan. The Appellant's own evidence is supported in large measure by the evidence that has been provided directly from the organisation itself. Mr Izit confirms that the Appellant was a member, as does the membership card. Importantly Rabbi Saunders has been able to confirm that the language used on the card is the modern Hebrew used in Israel. He considers it to be very unlikely that it has been written by anyone other than an Israeli. That is of significance for two reasons. First, it makes it far less likely that the Appellant himself has generated this material. Second, it is consistent with the country background information which indicates that there is some Israeli presence in Kurdistan, for instance, the BBC report on military personnel. This would tend to support the Appellant's evidence that extremist elements were alarmed by the group and sought to kill those involved with it.

31. I now turn to consider the Appellant's evidence about the attack on his family home in December 2015. The Appellant himself was not present to witness this attack. Rather it is narrated by his brother M, his sister K, and his uncle A. I have set out above, the Respondent has not had the opportunity to test the statements of these three witnesses. As such, they can only be given limited weight. I note however, the great detail given in each one.
32. The Appellant's sister narrates how on the night of [] December 2015 the family had been invited to dinner at their paternal uncle's home. She remarks that her father was pleased that the Appellant had elected to join them. She had noticed that her brother was well-dressed and was carrying a package. Sometime after dinner, she noticed that he had disappeared. She was informed by her younger sister that he had gone to visit a friend. When she, her father and other family members returned to the family home sometime after 10 o'clock they saw that the front door was open and they could smell burning and smoke. Her brother M came to the door. His face was visibly swollen and there were many signs of beating on his face. He told them that three armed men had raided the house and that they were looking for the Appellant. When they realised that he was not there they became very angry and forced him to tell them where the Appellant was. He showed them his room and they immediately began to search it. They said that the Appellant was evil and that he was working with Jews to destroy Muslims. They took some papers and the Appellant's laptop and set fire to the room. The Appellant's sister describes that night as one of the worst nights of her life. Her father was furious and commanded the family to pray and beg for forgiveness. He swore that he himself would punish the Appellant. Her mother fainted twice. The Appellant's sister makes clear at the outset of her statement that she is not happy about her brother's beliefs. She

does not regard them as acceptable but she wishes to help her brother because she does not think that people should be victims of their thoughts. On the night of the attack it was she who contacted the Appellant to tell him what has happened. She also spoke with their uncle and asked him to do whatever is needed to save the Appellant's life. Since her brother left Iraq she has continued to help him, for instance by obtaining the medical certificate in respect of her brother's injuries. In her statement she goes into some detail explaining the difficulties she faced in obtaining that document. Her statement concludes with a poignant plea to the Appellant's solicitor to help him. She says that she has always felt that he is her "most unlucky brother" and that his whole life has gone by the wind.

33. The Appellant's brother states that on the night in question he was alone in the family home. Sometime between 9 and 10pm he heard someone knocking at the door. When he answered it, he was confronted by three masked gunmen. They pointed the gun at him and demanded that he be silent. They entered and shut the door behind them. They demanded to know where the Appellant was. They used many taboo words that M is embarrassed to mention in writing. They told him that his brother had been working with Jews and asked how long this had been going on. They tortured M including hitting him with the back of a gun. They wanted to know the names of his friends. They ransacked the room and set fire to it before leaving. M states that he was scared, shocked and badly beaten. Whilst he was searching for his mobile phone the fire was getting bigger and had filled the entire room. He could hardly control it. When his father returned home, he got very angry. He said that Satan had been living in his house. The next day M attended hospital for treatment to his injuries.
34. The final statement is from the Appellant's uncle. He states that on the night of [] December 2015 he had come home from work tired and gone to bed. He was woken by his wife, who said that his nephew was on the telephone. As soon as he heard his voice he knew that he was very anxious. His voice was trembling and he asked for help. He asked his uncle to send somebody to rescue him. After the call was finished A telephoned his sister, the Appellant's mother. The telephone was answered by K. She said that her mother was not well and that some robbers had come to the house to kill the Appellant. A immediately left his home in Hawler (Erbil) and drove to Qaladze to collect the Appellant. On the journey home to A's house, the Appellant admitted to him that he had been volunteering with a Jewish organisation. A had heard that there was a secret band in Kurdistan; it seemed to A that in getting involved as he did the Appellant had acted carelessly and foolishly. He had put himself, and his family into danger. The remainder of the statement is concerned with the steps that A took to secure safe passage for the Appellant out of Iraq.
35. I have borne in mind that as the Appellant's relatives all three of these witnesses may wish to assist him and to that extent their evidence cannot be considered objective. I further remind myself that it is untested evidence and

that there is no indication before me that the Respondent has positively verified (either by use of the telephone numbers or email addresses provided) that the senders are who they say they are. That said it is evidence that I attach some weight to, given its level of detail (from three different perspectives) and its general consistency with the Appellant's account.

36. The final element of the account is the death of H. Again, that is not a matter that the Appellant can speak to directly. The reports of H's death have come to him from third parties. The only direct evidence is the death certificate, produced in the Arabic with a certified English translation. I have considered the fact that this document was produced late in the day, and that the Respondent has not had an opportunity to verify it. I further bear in mind that such documents are easily produced by, and purchased from, forgers in Iraq. That said I note that it is consistent with the account overall.
37. Having considered all of the evidence in the round, and having applied the lower standard of proof, I am satisfied that the Appellant has made out the factual basis of his claim. His own detailed evidence is consistent with the statements made by his family members, the supporting material from 'Love of Judaism', the medical report on his brother and the death certificate relating to H. I find the account overall to be consistent with the background material, which suggests that there is reported to be an Israeli presence in Kurdistan, and more importantly that such reports have created an atmosphere of paranoia and hostility, which finds particular resonance in Islamic extremist circles. I am satisfied that an association with a group such as 'Love for Judaism' would be reasonably likely to place the Appellant at a real risk of serious harm in his home area of Kurdistan. I am further satisfied (and indeed it was not argued by the Respondent that there was) that there is no internal flight option in this case. The Appellant would be an atheist, and therefore an 'apostate' wherever he went in Iraq and would accordingly find himself at risk for that reason wherever he lived.
38. It follows that I need not make any finding on the evidence of Mr Otten and the other Manchester humanists, save to note for the sake of completeness that Mr Otten did attend the hearing before me. He is known to myself and Mr McVeety as he was, until he retired in 2011, an Immigration Judge sitting at Manchester Piccadilly. Mr McVeety indicated that he had no questions for Mr Otten so his statement was admitted into the evidence unchallenged.

Decisions

39. The decision of the First-tier Tribunal contains a material error of law and it is set aside.
40. I remake the decision by allowing the appeal on protection grounds.

41. There is an order for anonymity.

Upper Tribunal Judge Bruce
28th December 2017