Upper Tribunal

(Immigration and Asylum Chamber) **Appeal number: PA/03250/2019 (V)**

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC	**Decision & Reasons Promulgated**
On 1 June 2021	**On 15 June 2021**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

DB

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (V)

For the appellant: Mr R Parkin, instructed by Barnes Harrild & Dyer Solicitors

For the Respondent: Mr A McVeety, Senior Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote

hearing. At the conclusion of the hearing, I reserved my decisions and reasons, which I now give. The order made is described at the end of these reasons.

1. The appellant, who is an Iraqi national of Kurdish ethnicity, emanating from the IKR, with date of birth given as 1.1.96, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 4.3.20 (Judge Evans), dismissing on all grounds his appeal against the decision of the Secretary of State, dated 21.3.19, to refuse his claim for international protection on the basis of his conversion from Islam to Christianity.

2. Permission to appeal was refused by the First-tier Tribunal on 2.4.20. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Perkins granted permission on 24.6.20 on each ground, finding arguable merit in the challenge to the judge's conclusion that whilst there is 'some' risk of the appellant being both ostracised and persecuted but not that there is a 'real' risk of such persecution. Judge Perkins was "concerned that the Judge may not have considered how the appellant will practise his new religion in Iraq and/or his reasons for practising it in a way that will not attract attention."

3. I note that in granting permission, Judge Perkins considered that [106] of the decision may be pivotal to the challenge to the decision.

4. I have carefully considered the decision of the First-tier Tribunal in the light of the helpful submissions of both representatives and the grounds of application for permission to appeal to the Upper Tribunal.

5. The First-tier Tribunal accepted at [98] that the appellant was a genuine Christian convert by the date of the appeal hearing and, by implication, that this conversion took place in the UK. It follows that he is a convert from Islam to Christianity, which may be regarded by Islam as apostacy. The judge also found that he would not proselytise. The real question was whether he would be at risk on these circumstances on return to the IKR.

6. The grounds complain that the judge failed to consider whether the appellant might face risk on 'passive' disclosure of his religious beliefs and conversion from Islam by that reason alone. It is also argued that the judge failed to ask why the appellant would not actively proselytise or even tell others about his belief unless prompted, whether this would be out of fear or simple personal preference. Finally, it is argued that the judge failed to consider whether even if any treatment may not amount to persecution it might amount to a very significant obstacle to reintegration, pursuant to paragraph 276ADE.

7. Mr Parkin advanced three main submissions, consistent with the grounds as drafted. First, that the judge failed to address the risk that the appellant may face a real risk through 'passive' disclosure of his Christian conversion from

Islam, his willingness to be open about it if asked. Second, that the judge failed to ask why the appellant's behaviour would change on return, in particular that he would not proselytise. Third, the admittedly narrow issue as to whether if not persecution, there would be very significant obstacles to integration.

8. It is clear from the judge's summary of the country background evidence at [104] of the decision that the judge considered that whilst there was some risk of being killed, much depended on the attitude of the community and family members. The IKR was generally more tolerant of converts than the rest of Iraq and violence against Christians is less common there. At [104.4] the judge noted, "Converts tend to keep their faith secret for fear of ostracism and violence. There is widespread animosity towards converts from Islam. Conversion can be seen by families and tribes as an affront to their collective honour. Further, open conversion would "likely result in ostracism and/or violence at the hands of the individual's community, tribe or family…"" At [104.5] the judge noted, "There is sufficiency of protection generally in the KRI but this would be unlikely to provide a convert with protection from their own tribe if they needed it."

9. It was for those reasons that the judge concluded at]105] that whilst a Christian convert might be at risk of persecution on return to the IKR, much depended on the individual circumstances of the case "as is emphasised in particular by the UNHCR report referred to at paragraph 88 above and the EASO guidance at paragraph 89 above."

10. As far as whether the appellant would proselytise, the judge noted at [99] that when asked, the appellant answered that he would be open and would not hide his faith but at no point in evidence or in any of his witness statements did the appellant indicate that he would wish to proselytise, and, apparently, had not done so in the UK. At [100] the judge noted that the evidence of his faith witness and minister was to the effect that proselytising was not a necessary part of the form of Christianity practised by the Bethel Church. It was for that reason open to the judge to conclude at [101] that on return the appellant would wish to be open about his faith "in the sense that he would not deny being Christian if the matter arose in conversation and would be content to speak about his faith." However, the judge found that he failed to establish to the lower standard of proof that he would wish to proselytise, which the judge found unsurprising.

11. At [106] the judge summarised the position that the appellant was likely on return to be open about his faith when such matters were discussed with friends and family. However, he was not likely to proselytise in public. "Therefore, whether he will be a risk will depend on the attitude of friends and family (and so his wider family and tribe). It is of course possible in light of the

country background evidence above that their attitude will be such that he will be in danger (I note in particular the reference to collective "honour" in the possibility of violence and ostracism)."

12. In summary, given the general evidence of tolerance of Christian conversion within the IKR, the judge considered that whether there was a risk to the appellant on return to the IKR from being open about his religion, (as opposed to from proselytising), would depend on the attitude of friends and family. That is consistent with the country background information available to the Tribunal.

13. However, on this essential point the judge bemoaned the lack of any evidence advanced by the appellant to assist his resolution of that issue. At [102] of the decision, the judge stated, "Turning to the attitude of the appellant's family and his tribe to his conversion, I conclude in the light of my findings above that the appellant has failed to prove anything at all in relation to these matters to the lower standard." At [103] the judge stated that the appellant had "proved nothing relevant about the circumstances to which he would return on a personal level other than that he is an Iraqi Kurd from a village near Sulaymaniyah in the KRI. I must therefore rely above all on the country background evidence." At [106] the judge stated, "However, the appellant has simply failed to put forward any account of substance of the matters I have referred to in paragraph 102 above. He has also provided no reasonable explanation for this family. His failure in this respect is all the more notable in light of the fact that he and his advisors were aware of the contents of the 2017 judgement. What he needed to prove at the hearing was clear."

14. Mr Parkin submitted that the judge should have addressed whether there was a risk to the appellant from 'passive disclosure' of his conversion to Christianity from Islam. Mr McVeety submitted that, according to the country information and as summarised by the judge, the risk depended on the particular circumstances of the appellant and the attitude of friends, family and tribe. As the judge stated at [106], "whether he will be a risk will depend on the attitude of friends and family." At [104.5] the judge found that there was generally a sufficiency of protection in the IKR "but this would be unlikely to provide a convert with protection from their own tribe if they needed it."

15. It is clear that the judge considered the establishment of a risk on return to depend on evidence of the attitude of the appellant's friends, family and tribe. However, there was a total absence of evidence as to what these would take, individually or collectively, to his Christian conversion in the circumstances where he would on the one hand be open about his faith if asked but on the other would not seek to proselytise it. As the judge pointed out, the appellant knew from the previous decisions what he had to prove but entirely failed to

do so. As Mr McVeety pointed out, there had been two previous Tribunal decisions which had rejected the factual basis of claimed events in Iraq. Proving risk on return requires the appellant to establish a real risk to the lower standard of proof; a hypothetical risk is not sufficient. In the absence of evidence upon which establishing such a risk could be founded, I can find no error of law in respect of this ground. I am satisfied that the approach and finding was open to the judge on the evidence and is cogently reasoned. It cannot be said that the finding was perverse or irrational.

16. Turning to the second submission, in reality this was little more than a variation of the first ground. Mr Parkin relied on WA (Pakistan) [2019] Civ 302 and submitted that the judge failed to ask why the appellant would change his conduct on return. It is correct that the judge did not ask why the appellant would not proselytise on return but the answer to that is obvious from the decision, that the appellant does not do so now, it is not an essential part of his religious faith, and the clear finding was that he would not do so on return. As Mr McVeety submitted, on the evidence there would be no "change of conduct" on return. Other than attending church, Mr McVeety submitted, the appellant had done nothing in the UK that would be different in the IKR. In the premises, there was no need to ask why there would be a change in behaviour when it is clear there would in fact be no such change. In the circumstances, I find that no error of law is disclosed by this ground.

17. In relation to the admittedly narrow alternative argument under paragraph 276ADE and very significant obstacles, I found no merit on the particular facts of this case in attempting to distinguish and identify very significant obstacles that would not otherwise amount to persecution. Mr Parkin submitted that the appellant would be very much an outsider because of his faith but the issue raised by 276ADE is whether he could integrate into the society from which he came, or whether there were very significant obstacles to doing so. I do not accept the proposition that because there would be no church to attend or because he would not proselytise or behave more openly this would amount to very significant obstacles to his integration. In the premises, this weak ground discloses no error of law in the decision of the First-tier Tribunal.

18. In the circumstances and for the reasons set out above, I find no material error of law in the decision of the First-tier Tribunal so that it must be set aside.

Decision

The appeal of the appellant to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 1 June 2021

Anonymity Direction

I am satisfied, having had regard to the guidance in the Presidential Guidance Note No 1 of 2013: Anonymity Orders, that it would be appropriate to make an order in accordance with Rules 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 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*."

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 1 June 2021