



IAC-AH-SAR-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: PA/07157/2019**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 9 May 2022**

**Decision & Reasons Promulgated  
On the 22 August 2022**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**AY  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms V Easty, instructed by Braitch Solicitors

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals against the decision of the Secretary of State made on 10 July 2019 to refuse his protection and human rights claim. His appeal against that decision to the First-tier Tribunal was heard on 2

October 2019 and was dismissed for the reasons set out in the decision dated 10 October 2019. An application for permission to appeal against that decision was granted by Upper Tribunal Judge Stephen Smith on 13 January 2020 and on 7 July 2020 the decision of the First-tier Tribunal was set aside for the reasons set out in the decision of Upper Tribunal Judge Kekic, a copy of which has been served on the parties. The matter was then transferred to me.

2. Subsequent to that, both parties made submissions in response to directions given in the decision of 7 July.
3. In light of those submissions I concluded it would be necessary to have an oral hearing to address issue of internal flight. A Case Management hearing was then heard on 7 December 2020 at which it was directed that the appellant provided an expert report addressing the difficulties he would face if any as an evangelical Christian in the IKR and, so far as necessary, in his home area and if relevant Baghdad.
4. The matter next came before me on 7 January 2022 at which point it became clear that the appellant has a partner who is a British citizen and they have two children who are also British citizens, a matter which had not been previously disclosed and which required to be taken into account. Having concluded that this amounted to a “new matter” for the purposes of Section 85 of the Nationality, Immigration and Asylum Act 2002, the appeal was adjourned for the Secretary of State to decide whether or not to treat the matter as a new issue.
5. The Secretary of State consented to the matter being treated as a “new matter” by the Upper Tribunal but did not accept that there was a genuine and subsisting relationship between the appellant and the children.

### **The Appellant’s Case**

6. The appellant’s case is that he is at risk on return to Iraq owing to his religion. He was born a Christian; his mother and father were also Christians. He was born in Kirkuk but had no problems on account of his Christianity before he left Kirkuk in 2008.
7. The appellant has now become an evangelical Christian, and a member of a community church in Derby, attending regular services, Bible study and prayer meetings. He says that he wishes to continue this activity on return to Iraq but he would be unable to do so in Kirkuk area nor would he be able to do so in the IKR. Further, and in the alternative, his case is that it would be unreasonable to expect him to relocate to the IKR where he has no relatives, no prospect of employment and no contacts on whom he could rely for support.
8. The appellant arrived in the United Kingdom in 2008 and claimed asylum on 27 August. His application was refused and his appeal against that decision was dismissed on 9 January 2009. Further submissions were

lodged in 2010, 2014; and, following an application for judicial review, the Secretary of State's decision to refuse his asylum claim of 21 October 2017 was reconsidered but she maintained the decision to refuse his asylum and human rights claim.

9. The respondent's case is set out in the refusal letter and also in the light of the First-tier Tribunal's decisions, a number of facts are accepted in submissions made to the First-tier Tribunal. It is accepted that the appellant is an Iraqi national from Kirkuk; that he is a Christian since birth; that he and his family practise their religion in Iraq without problem, and that he attends church in the United Kingdom and evangelises here (see Secretary of State's skeleton argument, 30 July 2020 at [4]).
10. The Secretary of State's case is that the appellant would not be at risk in his home area, noting that he was found not credible or reliable in his previous claim that he was at the risk of terrorists because his father was a high ranking police officer. It is submitted also there is evidence to show that there are members of evangelical Christian churches within the IKR, that the appellant would not encounter any difficulties and that the appellant would not have any difficulty in that area even were he to evangelise as he has done in the United Kingdom.

### **The Hearing**

11. I heard evidence from the appellant, from his partner and from a member of his church. In addition to the bundles produced to me I had an expert report. I had before me a supplementary bundle relating to Article 8 as well as an expert report from Dr Rebwar Fatah dated 1 November 2021.
12. The appellant adopted his witness statements of 14 April 2019 and 1 February 2022. He said that his life would be in danger on return to Iraq and he had no one to support him there.
13. In cross-examination the appellant said that he had had no problems as a Christian before he left Iraq and now although there had been 1.5 million Christians in Iraq, that number had now decreased significantly and it would not be safe for him there. He said that he had introduced other people to Christianity in the United Kingdom including one who was a witness who now leads in the promotion of Christianity amongst other Kurds.
14. The appellant said he had not wanted to mention other people and that he had said in his witness statement he had brought a number of people to the faith.
15. The appellant said that he had had a CSID in Iraq but he did not have it here. He said he was not sure what office he had obtained it from and that his parents had dealt with that. He said that both his parents had died before he left Iraq and he had a maternal uncle and a sister in Iraq but he was not in contact with them.

16. The appellant said that he has two children and a stepchild in the United Kingdom and he sees him every day. He said he did not live with them all the time and that they lived in Derby, about five minutes away from where he lives by car. He said that he and his partner share taking the older to nursery school which is about ten to twelve minutes' walk away.
17. Re-examined, the appellant said he and his partner had not lived together as he has no passport and no status and did not want to create problems for the children.
18. In response to questions the appellant said that he did recall attending a church in Iraq on a few occasions and that he had read the Bible in Sorani. He said he had become involved in the church in the United Kingdom as he had started going to a Kurdish restaurant in Derby where he was introduced to the leader of that church, Adam. He had also met some Iranian Christian Kurds and went to the church through their encouragement first.
19. The appellant said that they meet on Sundays and occasionally have other meetings; there is also a WhatsApp group.
20. Asked what he does to get people interested in Christianity, he said the people that they talk to, particularly those who are converting from Islam, need to hide it from their family and he and the church provides advice how to do so. He said that he did not approach people randomly but that he did speak to people with problems and would suggest that they come to their meetings, explaining that the only way to solve their problems, the only way was through Jesus and he described his way of bringing people to his faith is the way that Jesus did.
21. The appellant said that his life would be in danger in Iraq even in the IKR as the UNHCR Human Rights Report indicates they did not respect freedom of religion. He would not be able to freely express himself.
22. He said that he believed in the value, as a Christian, of telling people about Christ. He said that he approached these people by having friendly one-to-one conversation, asking if he can pray for that person and if they agreed doing so then suggesting after that that they might want to come to the meetings. He said he thought that this was the proper way of bringing people to the church, explaining how he had done so and how he had benefited from it. He said he did this when the opportunity arose depending on who he met. He said that those who convert from Islam to Christianity need much more support.
23. I asked the appellant how it would affect him if he would not be able to bring people to Christianity. He said that if he was passive and not doing that, that would imply in his view that he was not a good Christian and it is important to him to do so.

24. I then heard evidence from the appellant's partner who adopted her witness statement. She said he was a good father, plays an important role in their children's life, sees them on a daily basis. She said they would be lost and devastated if he had to leave and that she too would be lost because he was there and they were in it together so it is hard for her to imagine what her life would be like as a single parent.
25. Cross-examined the partner said that only the older child was at university about ten minutes' walk away, maybe a bit less by car. She said that the appellant sees the children every day, sometimes for the whole day.
26. I then heard evidence from Psthwan Mohammed of the Derby Community Church. He described it as an evangelising church. He said sometimes they do this by asking people in the street sometimes going to conferences and leafleting people. He said that the appellant goes with them sometimes and they go to church together although this had been disrupted by Covid.
27. Cross-examined Mr Mohammed said that he had arrived in the United Kingdom in 2002 and granted asylum in February 2021 on the basis of being an evangelical Christian (as agreed by Mr Tufan). He said that he was from Erbil.

### **Submissions**

28. Mr Tufan accepted that there was a family life between the appellant and his children, that Section 117B(6) of the 2002 Act applied and that the children could not be expected to go to live in Iraq. On that basis, the appeal fell to be allowed on an Article 8 basis.
29. Mr Tufan submitted that the appellant could relocate to the IKR where there are churches and that the expert report refers to Christians practising openly in the IKR (paragraphs 107 and 108) and that the likelihood of any difficulty was too speculative and there was limited evidence of adverse treatment of those evangelising. He submitted in any event there was nothing to show that the appellant would seek to proselytise on the street as that was not what he does here.
30. Mr Tufan submitted that it would in the facts of this case be reasonable for the appellant to relocate and that he would be returned to Baghdad. Thus the issue would be whether he could get an INID or CSID depended on whether Kirkuk had transferred to the new system or whether he would still be able to get a CSID card from there. He submitted the appellant was not a credible witness in any event he might not be able to get details as to the Article 3 risk on return to Baghdad.
31. Ms Easty submitted that it would not be reasonable to expect the appellant to relocate to the IKR relying on SMO and AH as he was not from there, had no relatives there and that as a Christian he would be admitted but would require a permit to reside. That might put him at some

suspicion but following SMO at [33] he was not likely to get a job and having no family, no skills, no job prospects and no funds likely to last more than a few months combined with the risk that the expert had identified is such that it would not be reasonable to expect him to relocate. Relying on the recent country guidance case Ms Easty submitted that the appellant's relocation would not be sustainable.

32. Ms Easty submitted that considerations of internal flight via Baghdad and the difficulties regarding CSID/INID arise only if the appellant has failed in his asylum claim and it is unlikely that he would be able to obtain a new CSID given that the old CSIDs were no longer being issued in Kirkuk.

## **Discussion**

33. It is for the appellant to demonstrate he has a well-founded fear of persecution, to the lower standard.
34. In assessing the appellant's claim I have done so in the light of the background evidence, and in particular with regard to the most recent guidance SMO and KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 bearing in mind the appellant's case is that he is at risk on account of his religion.
35. The starting point in this case is whether the appellant would be at risk in his home area, Kirkuk, and if so, whether it would be reasonable to expect him to relocate elsewhere within Iraq, in this case the IKR.
36. The starting point in reaching findings of fact in this case is the decision of the First-tier Tribunal. The judge noted [31] the starting point was the previous appeal, that of Judge Buchanan promulgated on 14 January 2009. The judge observed [32] that Judge Buchanan had not found the appellant to be credible or reliable and the question arose whether the appellant had any contact with relatives in Iraq. The judge considered [34] that the appellant's motive for relying on his Christianity seemed to be based on an assertion that he would in fact choose to evangelise on return to Iraq [36].
37. The judge also found that it was more than likely that the appellant continued to maintain contact with his sister and uncle in Iraq [37] and that they would be able to assist him in obtaining the appropriate documentation so that he could return. The judge did, however, note [39] that the uncle and sister lived in Kirkuk but did not make findings as to whether he would have family assistance within the IKR.
38. It was, however, noted by Judge Kekic that the judge had not asked why it was that the appellant and his family practised as they did [15] and no clarification as to why he evangelised in the UK but did not do so in Iraq or how he would if at all practise his religion on return.
39. Having heard and observed the appellant giving evidence, and taking the previous findings into account, I am satisfied that he is a committed Christian as confirmed by the witness from his church and the letters from

that church. There was some difficulty at the hearing in questioning the appellant about being an “evangelical” Christian or “evangelising”. It is in my view difficult to translate accurately what is meant by “evangelical”. I proceed on the basis that “evangelising” is normally understood to be seeking to spread the word of God, that is, the Christian faith by means of words and deeds. I have therefore focussed on how the appellant practises his faith in what he does.

40. In contrast to the appellant, Mr Mohammed participates in spreading the Christian faith publicly through missions, leaflets and leaflets people on the street and seeks to talk to strangers. That is not what the appellant does. The appellant’s account is of a quieter, less demonstrative approach. He falls into conversation with people, discusses their problems, explains how he had similar problems and how his faith in Jesus helped him to overcome that. It was notable that he said that he would talk to people first then ask their permission if he could pray for them. If the answer to that was “yes”, then he would do so and the discussion would be led on and he would perhaps ask them to come along to the church with him.
41. The appellant’s account of what he does was given with a degree of sincerity which I found persuasive. I am also persuaded that being able to spread his faith is an important part of the appellant’s identity as a Christian, and particularly as a Christian who has now become committed to a branch of the faith which seeks to bring others to the faith. To that extent, I am satisfied that the appellant is an evangelical Christian and would in his own, quiet way to seek to persuade people of the benefits of the faith. It was in my view instructive that he was aware of the significant difficulties that those who had not previously been Christian but had been Muslim had in adjusting to the faith.
42. Pausing there to reflect, and turning next to the test in HJ (Iran) I consider that the following have been established:-
  - (1) that the appellant is a Christian who would seek to proselytise/evangelise on return; and
  - (2) that he would feel inhibited in doing so.
43. Given the changes that have occurred in Iraq since the appellant left in 2008, illustrated not least by the significant diminution in the number of Christians in government of Iraq-controlled territory, I find that the appellant’s subjective fear is genuine. Whether, however, his fear is objectively made out is a separate issue. I am satisfied that being able to spread the faith is an integral part of the appellant’s identity as an evangelical Christian and that not being able to do so would cause him significant harm.
44. I turn first to the situation for Christians in Kirkuk, the appellant’s home area. This is addressed briefly in Dr Fatah’s report. In assessing whether

his fear is made out in Kirkuk, I have had regard to the report of Dr Fatah. Dr Fatah's expertise in Iraq is well-known to the Upper Tribunal and he has been a witness central to several of the most recent country guidance cases not least which is SMO.

45. Dr Fatah notes [64] that after the ousting of Saddam Hussein in 2003 Christians were subject to persecution to the extent that the population of Christians had fallen from 1.4 million to some 300,000, the great majority of whom now live in the IKR. The threats to Christians from the Islamic state were significant, the last Christians in northern Iraq being forced to flee [68].
46. There is, I consider, significant material indicating that the position of Christians in the areas under government of Iraq control, particularly those of Shia militias is particularly difficult as is also noted in section 5.2 of the most recent CPIN entitled Iraq: Religious minorities of July 2021.
47. Dr Fatah notes in his conclusions that Christians as well as other non-Muslim and non-Arab ethno-religious groups are targeted solely for their faith or ethnicity in Iraq [119] and that Christians in the south and central governorates have faced threats particularly from Shia militias and ISIS [120]:

While Christians are able to practise their religion openly in the IKR, evangelising and proselytising may lead to adverse attention. This is likely to come mainly from society and those around him, rather than the state. If [the appellant] is perceived to be denouncing Islam and evangelisation this would also increase the likelihood of his being targeted by wider society. If [the appellant] were to evangelise and proselytise, he may also anger many people including the families of those he seeks to convert, this may result in targeting. This would be true of all parts of the IKR.

The police are unlikely to get involved in disputes involving religion in the IKR. Christians in general are protected from generalised and targeted violence against them in the IKR. If an individual were to be evangelised and become involved in disputes with others within communities that would not tolerate evangelisation, it is unlikely the police would become involved. If a crime is committed, such as assault and murder, the police would then become involved.

48. With regard to the situation in Kirkuk Dr Fatah states [131] that on 16 October 2017, in response to the Kurdistan independence referendum, the Iraqi Army and the Shi'ite Hashd al-Shaabi paramilitaries took over in Kirkuk. After this takeover, Kurdish officials in Kirkuk were removed from office. There is a growing fear of resumption of a systemic Arabisation campaign in Kirkuk, which has once been carried out by GOI. These policies of demographic engineering were encouraged by subsequent Iraqi governments, due to the presence of violence in Kirkuk.
49. Although there are a number of incidents in Kirkuk identified, these do not appear to involve Christians. That said, there appear to be continuing



attempts to Arabise the population and to drive out Kurdish residents (see section 7.2).

50. Drawing all of these factors together, I conclude that as an evangelical Christian of Kurdish ethnicity that the appellant is at risk either from militias or the local population out of a combination of these factors and that, on the basis of the expert evidence from Dr Fatah, he is unlikely to obtain the protection of the authorities. Accordingly, for these reasons, I am satisfied that the appellant is at risk in his home area of persecution on account of his religious beliefs and that his having to hide his activities would be on account of his religion.
51. I turn next to whether it would be unduly harsh to expect him to relocate to the IKR. The guidance set out in SMO, whilst relevant to Article 15, is relevant also to the assessment of whether it would be unduly harsh to expect him to relocate there. I find that there is little evidence to suggest that the appellant would be at risk simply for being a Christian in the IKR. I accept that there may be some difficulty were he to proselytise in the way he has done in the United Kingdom and I accept that he would wish to do so and indeed would be compelled to do so by his faith. That would put him at some risk but I do not consider from the appellant's evidence about how he discusses his faith with non-Christians that this is a case in which he would, for example, be perceived to be denouncing Islam.
52. The first issue to be considered is to whether he has assistance of family. The appellant's account of not being in contact with family in Kirkuk, was not believed. But a disbelief that he is not in contact with an uncle and sister cannot properly be evidence that he has support of family in the IKR.
53. Despite the credibility findings reached by Judge Buchanan and implicitly by Judge Sangha, which I have taken into account in assessing the appellant's evidence before me, and bearing in mind the appellant has been out of Iraq for fourteen years, I am not satisfied that there would now be available to this appellant family members in the IKR who could accommodate him. I accept that he would return with a grant from the United Kingdom but given that he has no job skills, has been out of the country for fifteen years he is unlikely to be able to obtain remittances from family in the United Kingdom, nor was it submitted that these would be available. I am satisfied that his funds of US\$1,500 would rapidly be depleted without him being able to obtain proper accommodation or employment and thus it is likely that he would have to resort to "critical shelter arrangement" such that it would be unduly harsh.
54. Further, I consider it unlikely that the appellant would be able to obtain a CSID given the difficulties in travelling to either Baghdad or Kirkuk to obtain an INID and I am satisfied on the basis of the evidence before me that that office would no longer be issuing a CSID. Even with such a document, the appellant has no skills and is from Kirkuk, and from a religious minority, and given that patronage and nepotism are important factors, I find that viewing the evidence as a whole I am satisfied that his

chances of securing employment are low and that accordingly, even though he would be admitted to the IKR, given also that he would have a subjective if not an objective fear through being an evangelical Christian, that in the particular circumstances of this case it would be unduly harsh to expect him to relocate to the IKR.

55. Accordingly, for these reasons, I am satisfied the appellant has a well-founded fear of persecution in Iraq on account of his religion.
56. Having reached these findings, it is unnecessary for me to make any findings with regard to Article 3 of the Human Rights Convention save to conclude that for the same reasons, returning him to Iraq would be in breach of the United Kingdom's obligations pursuant to Article 3.
57. Having concluded that the appellant is entitled to refugee status, by definition he is not entitled to humanitarian protection and therefore it is unnecessary to make any findings on that issue.

### **Article 8**

58. In the particular circumstances of this case I have gone on to consider whether, in the alternative, requiring the appellant to leave the United Kingdom would be in breach of the United Kingdom's obligations pursuant to Article 8. I have concluded, in the light of the concession made by Mr Tufan that that is so. The appellant has a family life with a partner and two British citizen children. It is, as the Secretary of State has conceded, unreasonable to expect the children to leave the United Kingdom, thus Section 117B(6) of the 2002 Act is engaged. Accordingly, had I not allowed the appeal on an Article 3 basis or on an asylum basis, I would have gone on to allow the appeal on an Article 8 basis.

### **Notice of Decision**

- (1) The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
- (2) I re-make the decision by allowing the appeal on asylum and human rights grounds.
- (3) I formally dismiss the appeal on humanitarian protection grounds.
- (4) The anonymity order made is maintained.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

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 their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 19 August 2022

Jeremy K H Rintoul  
Upper Tribunal Judge Rintoul