



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: PA/05233/2019**

**THE IMMIGRATION ACTS**

**Heard remotely via Teams  
On 26 May 2021**

**Decision & Reasons Promulgated  
On 27 May 2021**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**AMS  
(ANONYMITY DIRECTION MADE)**

**Appellant**

**and**

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

**Respondent**

**Representation:**

For the Appellant: Mr Hussain

For the Respondent: Mr McVeety, Senior Presenting Officer

**DECISION AND REASONS**

1. By a decision promulgated on 9 March 2021, I set aside the decision of the First-tier Tribunal. My reasons were as follows:

“1. The appellant is a citizen of Iraq who was born in 1992. He appealed to the First-tier Tribunal against a decision of the Secretary of State refusing his claim for international protection. The First-tier Tribunal, in a decision promulgated on 9 September 2019, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. At the remote initial hearing in the Upper Tribunal, Mr Bates, who appeared for the Secretary of State, told me that the respondent did

not oppose the appeal and accepted that the judge had erred in law such that his decision fell to be set aside. He accepted that (as Judge Lindsley had stated in her grant of permission at [5]) the judge had ignored the appellant's conversion to Christianity when assessing [72] whether the appellant could enlist the assistance of male family members in Iraq to enable him to obtain replacement identity documents. It had been the appellant's evidence, supported by expert evidence detailing discrimination and hostility to Christians in Iraq, that such support would not, as a consequence of his conversion from Islam, be forthcoming.

3. In the circumstances, I set aside the decision. I do not consider that the Tribunal's findings of fact on the appellant's account of past events [45, 49-56] need be revisited. The judge's findings in respect of the ability of the appellant to obtain fresh identity documents are set aside. The issue remaining to be determined is whether the appellant may safely be returned either to his home area of Iraq or, if he cannot be returned there, whether he may avail himself of the option of internal flight, having regard to such identity and other necessary documents he may be able to obtain either before returning or on arrival in Iraq. Findings on that issue will be informed by the fact that the appellant is a genuine convert to Christianity. The decision may be remade in the Upper Tribunal. Additional evidence may be adduced by both parties provided copies of such evidence (including witness statements) are sent to the other party and to the Upper Tribunal no less than 10 days prior to the resumed hearing.

#### Notice of Decision

The decision of the First-tier Tribunal is set aside. Findings of fact are set aside/preserved as detailed at [2] above. The decision will be remade in the Upper Tribunal at a resumed hearing"

2. At the resumed hearing on 26 May 2021, Mr McVeety, who appeared for the Secretary of State, told me that the respondent accepts that the appellant should succeed on Article 3 ECHR grounds because, as an individual from Kirkuk, he cannot obtain the necessary identity document (now an Iraqi National Identity Card or INID) without being exposed to a real risk of harm following return via Baghdad.
3. Mr Hussain, who appeared for the appellant, agreed with Mr McVeety's submission but argued that the appellant should also succeed on refugee grounds. The appellant is a genuine convert to Christianity although it is not claimed that he would actively proselytise his faith on return. Mr Hussain submitted that the evidence of the appellant's expert (Dr Pargetter) indicated (albeit by reference to the previous CSID identity document) that the Iraqi authorities would not countenance an applicant for an identity card claiming Christianity as his/her religion. The expert gives an example of an individual who argued in court in Iraq that he should be recorded as a Christian being denied that right by the judge. In conclusion, Dr Pargetter [7.2] wrote:

"In summary, as a Christian convert, it would be extremely challenging for Mr Saleem to return to his own area of Kirkuk, or to try to settle elsewhere, including in the KRI. Were he to practice his faith openly he would likely face

social stigma, ostracism and potential abuse; were he to proselytise, he could find himself at real risk of serious harm from non-state actors.”

Mr Hussain acknowledged that there is no current country guidance concerning Christian converts returning to predominantly Kurdish areas of Iraq. However, he submitted there is sufficient evidence of risk in the passage of the expert’s report quoted above and (by reference to *HJ (Iran)* [2010] UKSC 31) on account of the inability of the appellant properly to express his true faith in his application for the most significant record of his citizenship of Iraq, that is his national identity document.

4. Although Mr Hussain’s submissions were skilfully made, I am not satisfied that, on the current evidence, the appellant has discharged the burden of proof in his asylum appeal. Dr Pargetter considers that any ‘serious harm from non-state actors’ is likely to occur if the appellant were to proselytise his faith, which Mr Hussain acknowledged is not likely. The phrase ‘potential abuse’ lacks adequate explanation and detail to meet the criterion of real risk whilst Mr Hussain did not argue that a risk of ‘social stigma, and ostracism’ *per se* would be enough to meet that criterion. Moreover, the expert’s account of the individual ‘who tried to change the religious designation on his ID card’ is, in my opinion, an indication that asserting one’s non-Muslim faith even before a court of law is relatively without risk; there is no indication that the individual acted rashly by bringing the challenge or that he suffered adversely as a result of the court’s decision. It is difficult to see how the principles of *HJ (Iran)* are engaged in circumstances where someone openly asserts his/her Christian faith but a court insists that the applicant is recorded as a Muslim. In any event, as Mr McVeety submitted, the appellant has not adduced any evidence as to the contents of the current application form for an INID; the appellant’s arguments on this issue and the comments of the expert are largely speculative.
5. Accordingly, I dismiss the asylum appeal. As I told Mr Hussain, if, at some time in the future, the current problems of returnees acquiring identity documents are overcome and the appellant is faced with a decision to remove him to Iraq but at that time he has evidence that his Christian faith will expose him to risk on return, then he will no doubt make further representations to the Secretary of State.
6. Mr Hussain also argued that the appellant should succeed on Article 8 ECHR grounds on the basis that his current documentation problem shows that there would be ‘very significant obstacles’ to his integration into Iraq (see paragraph 276ADE (1) (vi) of HC 395 (as amended)). Mr McVeety did not challenge that submission, save that he pointed out that the period of leave to remain which the appellant would be awarded is less than that which his success on Article 3 ECHR grounds will attract. Accordingly, I allow the appeal on Article 3 and 8 ECHR grounds.

**Notice of Decision**

I have remade the decision. The appellant's appeal against the decision of the Secretary of State dated 8 May 2019 is allowed on human rights grounds (Articles 3 and 8 ECHR). The appeal on asylum grounds is dismissed.

Signed  
Upper Tribunal Judge Lane

Date 26 May 2021

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

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.