

**Upper Tribunal**

**(Immigration and Asylum Chamber) Appeal Number: PA/11439/2017**

**THE IMMIGRATION ACTS**

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| **Heard at Field House** | **Decision & Reasons Promulgated** | |
| **On 1 May 2018** | **On 11 June 2018** | |
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**Before**

**DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS**

**Between**

**shaho karim**

(anonymity direction not made)

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr K Mukherjee of Counsel instructed by Rodman Pearce.

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer.

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Ferguson promulgated on 23 January 2018 dismissing the Appellant’s appeal on protection grounds against a decision of the Respondent dated 25 October 2017 to refuse asylum in the United Kingdom.

2. The Appellant is a national of Iraq of Kurdish ethnic origin. He claims to have left Iraq on 5 December 2015 and to have passed through Turkey, Greece, Macedonia, Serbia, Croatia, Slovenia, Austria, Germany and France before reaching the United Kingdom. He says that he spent approximately fifteen months in the so-called ‘jungle’ at Calais. He arrived in the United Kingdom on 26 April 2017 clandestinely and claimed asylum on the same date. He was ‘screened’, and in due course underwent a substantive asylum interview in the usual way. The Respondent refused his application for reasons set out in a ‘reasons for refusal’ letter (‘RFRL’) dated 25 October 2017.

3. The Appellant appealed to the IAC.

4. The appeal was dismissed for reasons set out in the Decision and Reasons of First-tier Tribunal Judge Ferguson.

5. The Appellant applied for permission to appeal to the Upper Tribunal which was granted on 20 February 2018 by First-tier Tribunal Judge Alis on the basis of grounds of appeal drafted by Mr Mukherjee - who appeared before me but did not appear before the First-tier Tribunal.

6. The background to the Appellant’s case is this. He states that he is an atheist. In or about late 2014 he built a statue out of used bottles, many of which had previously contained alcohol being variously wine and beer bottles. The statue was in the form of a tree and he, together with two others who had assisted him, had built it as a statement on littering and environmental protection. Notwithstanding the intentions behind constructing the statue, it was the subject of adverse comment and criticism by two different imams successively on 31 October 2014 and 7 November 2014. The Appellant says that in consequence of this, and in particular in consequence of the second denouncement of the statue, he encountered a degree of hostility from members of his community. This had the consequence also of alerting his family to the circumstance who reacted towards the Appellant adversely: the Appellant also claimed that during discussions and arguments concerning the statue and claims that he was bringing dishonour upon his family, his family came to learn that he was an atheist.

7. It is the Appellant’s case that he was beaten by members of his family- specifically his father and uncles - to an extent that his leg was broken on 9 November 2014 and he was hospitalised for ten days. The Appellant says thereafter he in effect went into hiding, staying in a largely deserted neighbouring village until he left Iraq on 5 December 2015 to make his way to the United Kingdom - as indicated above, not arriving until some considerable time afterwards because, on his account, he spent so much time in Calais.

8. The First-tier Tribunal Judge accepted that the Appellant had produced evidence demonstrating his involvement with the construction from glass bottles of a sculpture of a tree. However, the Judge rejected the Appellant’s claim to be at risk from members of his family’; indeed he characterised the claim as being “*a fabricated claim*” (paragraph 20). The appeal was dismissed accordingly.

9. The grounds of appeal raise one issue. It is pleaded, that notwithstanding the rejection of the Appellant’s claimed risk from his family, the First-tier Tribunal Judge failed to make any finding on risk from members of the community or from wider society. The grounds in support of this single proposition identify various passages in the Appellant’s statements where he refers to having been the subject of harassment and threats from members of the community.

10. The obstacle this submission encounters is that it is apparent on the face of the Decision of the First-tier Tribunal that the Appellant was no longer claiming that he would be at risk from members of the community but was pursuing his appeal only on the basis of the claimed risk from members of his family. Paragraph 17 is explicit:-

“*The events described were not entirely a family matter, since Mr Karim says that he suffered threats from other people because of the comments of the Imams. Although he does not claim a fear of other people now on his return ...*”.

11. The basis of the Appellant’s claims before the First-tier Tribunal may also be seen from paragraph 14 where the Judge records this:-

“*His fear on return is linked to the statue only because he says that this incident was the cause of his family becoming aware that he was an atheist*”.

12. In context it seems clear enough that although the Appellant referred to the past circumstance of being denounced by imams, and that this caused a ‘stir’ within the local community, by the time of his appeal hearing it was the reaction of his family – and in particular to the subsequent discovery of his atheism – that he claimed would put him at risk on return.

13. This limited basis for the appeal is broadly reinforced by one of the passages quoted in the grounds of appeal taken from the Appellant’s witness statement of 24 November 2017 in which the Appellant referred to problems from the community:-

“*When I heard about the cleric’s speech I knew that this could cause me problems with my family and the local community. This is why I started getting scared. After 31/10/2014 I did not experience any actual persecution besides the fact that people were talking about me and the statue. It was not until the second time on 07/11/2014, when a mullah in Hajiawa preached about me, that my father and uncle attacked me and beat me*”.

14. In any event, the First-tier Tribunal Judge sets out in some considerable detail the submissions that were made on behalf of the Appellant by his then advocate (paragraph 10). It is apparent therein that whilst the problems with the local mosque are referred to, what is emphasised are the family problems germane to the asylum claim. For example: “*He had problems with the local mosque and then his family and it was family problems which caused him to leave*” (my emphasis); reference was made in the submissions to a possible absence of state protection because “*The authorities would view this as a family dispute and be much less likely to get involved*”; in respect of internal relocation the argument is put that “*there was a risk that his family would eventually find him*”. It was not submitted that state protection might not be available because others would seek to persecute him. It was not submitted that internal flight was not available because members of the community would seek to persecute him.

15. Such matters are also reflected in the Skeleton Argument that was before the First-tier Tribunal. At paragraph 6 it is stated in terms “*Mr Karim cannot return to his home area due to the threat that he faces from his family*”.

16. It also seems clear that this was the substance of the Appellant’s evidence before the First-tier Tribunal. I have already referred to the passage in his statement of 24 November 2017 that was quoted in the grounds of appeal to the Upper Tribunal. His appeal witness statement of 24 November 2017 also includes the following at paragraph 12:

“*Generally in Kurdistan it is not a big issue if you don’t follow the religion strictly. However, depending on your family, it can become a huge problem when they realise that you are rejecting Islam completely, which is what I did*”.

The Appellant thereby relates his problem - the risk - to his family.

17. Yet further, it is apparent from the Judge’s record of proceedings that the Appellant was asked specifically who he feared. The judge’s record of proceedings - to which I drew the attention of the representatives during the hearing - says this, “*Who fear? My father and two paternal uncles. The third one is OK*”. (In context the “*third one*” appears to be a reference to a third uncle.)

18. There it is. It is absolutely clear that the thrust of the evidence and the submissions before the First-tier Tribunal were not that the Appellant was at risk on return from members of the community, but that he feared his family. The Judge rejected such risk for what, in my judgement, are entirely sustainable reasons. Indeed, no challenge has been advanced in the grounds to the Judge’s findings in this regard. Regrettably Mr Mukherjee’s challenge is misconceived in that he has wrongly formed the impression that the Appellant was pursuing a point before the First-tier Tribunal that he was not.

19. Even if it were otherwise, it seems to me adequately clear that the Judge’s consideration of the country information is such that he would not have concluded that the Appellant was at risk from the wider community. At paragraph 15, in considering background country information, the Judge states:-

“*Other background reports in the appellant’s bundle show that some atheists are the target of abuse by some militant Islamic believers. But the IKR is a more secular society than the non-Kurdish areas of Iraq, and not living as a practising Muslim does not attract any attention or risk of harm*”.

The Judge then goes on to identify only one example being documented in the reports from 2013, and notes that even that example is not followed up in any way in any subsequent reports.

20. In the circumstances I reach the conclusion that there is no error of law on the part of the First-tier Tribunal for the simple reason that the matter which it is said was not addressed or engaged with was not a matter relied upon.

21. Even if I were wrong in this regard - and I note that Mr Mukherjee urges me to consider that it might be said that it was incumbent upon the Judge in any event to consider the risk from the wider community even if the Appellant was not expressing a fear in his regard - I would not set aside the Decision. In this context I have in mind in particular: the Judge’s finding as to the fabricated nature of the Appellant’s claim; the fact that the Appellant on his own account remained for over a year in his home area after the denouncement by the imams; and the Judge’s findings in respect of the background material. Accordingly, even if I were persuaded – which I am not - to the view that the Judge failed to engage with a matter with which he should have engaged, I find that the outcome in the appeal would have been the same. In such circumstances I would not exercise the discretion inherent in section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 to set aside the decision of the First-tier Tribunal. However, for the reasons already given the challenge fails without needing to consider an alternative approach.

**Notice of Decision**

22. The decision of First-tier Tribunal contained no error of law and stands accordingly.

23. The Appellant’s appeal remains dismissed.

24. No anonymity direction is sought or made.

*The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.*

Signed: Date: **9 June 2018**

**Deputy Upper Tribunal Judge I A Lewis**