Upper Tribunal
(Immigration and Asylum Chamber)

YMKA and Ors (‘westernisation’) Iraq [2022] UKUT 00016 (IAC)

THE IMMIGRATION ACTS

At: Manchester Civil Justice Centre (hybrid hearing) **Decision Promulgated**

Heard on: 15 th September 2021

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Before

UPPER TRIBUNAL JUDGE BRUCE

Between

YMKA (A1)

FATA (A2)

WYMA (A3)

YYMA (A4)

AYAA (A5)

(anonymity direction made)

Appellants

and

Secretary of State for the Home Department

Respondent

For the Appellant: Mrs Johnrose, Counsel instructed by Broudie Jackson & Canter Solicitors

For the Respondent: Mr Tan, Senior Home Office Presenting Officer (remote attendance)

The Refugee Convention does not offer protection from social conservatism per se. There is no protected right to enjoy a socially liberal lifestyle.

The Convention may however be engaged where

(a) a ‘westernised’ lifestyle reflects a protected characteristic such as political opinion or religious belief; or

(b) where there is a real risk that the individual concerned would be unable to mask his westernisation, and where actors of persecution would therefore impute such protected characteristics to him.

DECISION AND REASONS

1.
The Appellant s are all national s of Iraq . Their appeals are linked because they are all members of the same family. The F irst A ppellant (A1) is the father, A2 is the mother, A3 is their daughter born in 2006 , A4 is a daughter born in 1999 , and A5 is a son born in 1997 . They all seek protection and/or leave to remain in the United Kingdom on human rights grounds.

2.
The Appellants ' linked appeals were all dismissed by the First-tier Tribunal . They were each granted permission to appeal to this Tribunal. The matter first came before me on the 24 th November 2020 as a 'remote' hearing conducted by Skype for Business in accordance with the restrictions then in place to control the spread of Covid-19. The Appellants were represented by Mrs Johnrose and the Respondent by Mr Tan. By my written decision dated the 30 th December 2020 I set the decision of the First-tier Tribunal aside [1] , although as I set out below, some of its findings were preserved. It is regrettable that it has taken this long for the resumed hearing to be effective. The resumed hearing was conducted at Manchester Civil Justice Centre with all participants save Mr Tan, who was self-isolating, appearing in person: Mr Tan appeared remotely. I heard evidence from all Appellants except for A3, whose evidence was uncontested, and I reserved my decision.

Background and Matters in Issue

3.
This is a family who left their native Baghdad in 2006 in the aftermath of the fall of the Ba'athist regime. They spent a number of years living in Jordan (where A3 was born) and the UAE before coming to the United Kingdom. The route to entry was through A 4 , who was granted a visa enabling her to attend boarding school in the United Kingdom. She has been here since she was six years old. Her mother and siblings arrived to visit her in March 2013 , her father the following year. In very brief summary the case put for the Appellants is that they are 'westernised' individuals who hold views antithetical to those prevailing in Iraqi society today , and that this fact would place them at a real risk of serious harm and/or present very significant obstacles to their integration in Iraq. The Appellants aver that the decision to refuse them leave is today a disproportionate interference with their Article 8 rights.

4.
Following my decision of December 2020 the Respondent undertook a review of the case. In the hiatus between that hearing and the review A3 had reached the point where she had spent seven years of her childhood living continuously in the UK. Having had regard to the undisturbed findings made by First-tier Tribunal the Respondent accepted that as a 'qualifying child' it would not be reasonable to expect her to leave the UK : as such she would be entitled to leave to remain under paragraph 276BE(2) with reference to 276ADE(1)(iv) . This concession was communicated in a document dated the 20 th January 2021. The Respondent further accepted that as a result, A1 and A2 would attract a grant of leave in line with their daughter , having regard to the provision relating to the public interest at s117B(6) Nationality, Immigration and Asylum Act 2002. The effect of this concession, for the purpose of this decision, is that the appeals of A1-A3 are allowed by consent on human rights grounds. A1-A3 continue to pursue their appeals on protection grounds.

5.
A4 and A5 both rely on all grounds.

The E vidence

The Appellants' Characteristics and Beliefs

6.
Before the First-tier Tribunal it was the evidence of each family member that they do not believe in any god, and that consequently they do not consider themselves to be Muslims. In addition to their own evidence they relied on statements from family friends who had discussed matters of faith with, in particular, A1, A2, A4 and A5. This evidence was accepted by the Tribunal which found at its §66 that they are atheists. That finding stands.

7.
The statements of the Appellants and their oral evidence before me gives further detail on this matter. Before they left Iraq this was a family who lived in the al-Mansur district of Baghdad. Al-Mansur was then populated by wealthy, educated Sunnis many of whom were secular Ba'athists . Although the Appellants were all nominally Muslim at birth, A1 explained to me that none of them have ever been practising . Neither he nor his wife were brought up to be religiou s. Although he could go "through the motions" he would not even know how to pray. He explained that he would know when to stand up and bend down etc because he has seen many Muslims at prayer, but he does not know the words. The family are not even culturally Muslim – they do not for instance fast during Ramadhan or celebrate Eid. In turn their children have never been taught to pray or observe any of the Islamic festivals . This is a family who place great value on science. A1 was an electrical engineer , and as I detail below , A4 and A5 have both excelled in the study of science and are currently read ing Mathematics at Liverpool University . A4 regards herself as "strongly" atheist and A5 expresses a fear about hiding his atheism in the context of the "senseless killings" that have taken place in Iraq in the name of religion.

8.
A1 explains that whilst he does not have any ill- will to wards practising Muslims, there are many aspects of the faith which he finds objectionable. He is not happy about the extent to which Iraqi society and politics have come to be dominated by Islam in recent years. A2 states that none of her children have ever been in a Mosque except A5 who went once, she assumes on a school trip . She fears that in Iraq the family would not be accepted as atheists, and they are "not willing to pretend".

9.
All of the Appellants refer to themselves as "westernised". A1 states that his children have "westernised views and appearances" . A2 points out that neither she nor her daughters wear hijabs and nor do they want to. She says of A4: "She is used to living her life as a western woman. She would not be able to live under the restrictions placed on women in Iraq and in Muslim societies…my daughter's westernised behaviour would be viewed as shameful in Iraq". In her own statement A4 says that the though t of living in Iraq fills her with fear. Not only because of her bad memories of the violence and terror (she was 6 years old when she left) but because she cannot contemplate living life as women do in I raq. Although she spent a number of years living in the UAE she was then too young to recognise the restrictions that women face in Islamic society : she states that she would not be able to tolerate such restrictions now, after having become accustomed to living in the UK. In her most recent statement A4 expresses particular concern about her mental health in circumstances where she would be required to suppress her identity. She refers to the (uncontested) evidence that she was previously diagnosed with Post Traumatic Stress Disorder and received counselling as a result. She

does not think that she would be able to “withstand all the pressures” that life in Iraq would place on her.

10.
Before me A4 gave evidence about her ‘western’ political views. She does not agree with the “way that women are treated in Islam”. She does not accept that women are the property of their fathers or husbands. She does not agree that women should be forced to cover their heads or wear ‘modest’ clothing. She states : “ I could not accept living in an environment where I am not treated as an equal citizen”. As a result of these views, A4 claims that she is an active proponent of feminist and progressive thought. She takes part in discussions and campaigns at university and states that she posts and shares content via Instagram ‘stories’ about women’s issues and LGBT QI+ rights. When Mr Tan questioned why there was no evidence of this produced before the Tribunal A4 explained that ‘stories’ are only available on Instagram for 24 hours and that after than they disappear. She gave several examples of content she has recently shared, for instance in support of women’s rights in Afghanistan after the Taliban takeover, and speaking out against violence after a series of attacks on members of the LGBT community in Liverpool. A4 states “I would want to speak out about women’s rights and atheism in Iraq but I would be scared about the consequences”. The bundle contained some documentary evidence in support of A4’s claim to be outspoken and involved in politics in the UK. Whilst in Year 11 at school she won a ‘Student of the Term’ award for representing the school at a debate at Liverpool Town Hall. The comment on the certificate describes her as a “real leader”. In 2014-2015 she was elected to be a Young Lord Mayor of Liverpool and in the same year she received a certificate from David Cameron, then Prime Minister, in recognition of the contribution she has made to ‘her country’ under the auspices of the National Citizen Service. She is currently President of the Mathematics Society at Liverpool and is the student representative on the Staff-Student Liaison Committee.

11.
In respect of her personal life A4 has been going out with a British boy since 2015. His name is Mike and he has written a letter in support of her claim. Because of their respective educational commitments the relationship has in the past few years been long distance, but Mike writes that they maintain daily contact. He regards her as his best friend as well as his girlfriend. When they finish university he would like to move to the same city, find jobs and live together. A4 acknowledges this, although she states that the uncertainty about her status makes it hard for her to make such plans. A4 states that she would like to live with Mike, but not get married: “I don’t accept the concept”.

12.
A4 and A5, Mr Tan very fairly accepted, both excel academically. A4 has ‘ A’ levels in Maths (A), Further Maths (A), Physics (A), Chemistry (A) and Biology (B). As a result of that outstanding achievement she was first offered a funded place at Sheffield to study Engineering, a place she took up in 2018 until her lack of status compelled the University to withdraw her offer. She was subsequently offered a place at Glasgow University to read Medicine but again her l egal position meant that she was unable to take it up . Liverpool University stepped in to offer her a place in 2019 to study Maths on a full academic scholarship under a specific scheme for refugees and asylum seekers . Her fees are paid and she receives a bursary of £3000 per year. There are only two of these scholarships available every year. It is all the more remarkable then that the beneficiary of the other grant is her brother , A5. He came to Liverpool after achieving across the board A/A* grades in the same ‘A’ levels as his sister and having already lost a place at Cambridge University due to immigration status. I have before me letter s from the Mathematics Department at Liverpool

commending both Appellants. Dr Alena Haddley describes A4 as an “exceptional student” and Dr Ozgur Selsil says of A5: “[he] is a brilliant student who caught my eye in the very first lecture. I taught him in the first and second year and I have no doubt that he is exceptionally talented”. Dr Selsil expresses a hope that A5 will go on to undertake a PhD. In his oral evidence A5 confirmed that this is what he would like to do, possibly involving the application of maths to medical research.

Country Background Material

13.
The Respondent re ferred me to the CPIN Country Policy and Information Note Iraq: Religious M inorities published in July 2021 . This states that 97% of the Iraqi population are Muslim, with the remaining 3% being classified as one of the permitted - that is to say officially recognised – minority faiths [3.1.1]. Islam is the official religion of the state [4.1.1] but the constitution guarantees adherents of other faiths the right to practice (bar Bah’ais) . This is largely respected, although there have been reports of government-affiliated militias and non-state actors committing human rights abuses against minorities with impunity. For instance the May 2019 report by the United Nations High Commissioner for Refugees (UNHCR) ‘ International Protection Considerations with Regard to People Fleeing the Republic of Iraq’ details [at 5.1.1] how there have been instances of killings and kidnappings of religious minorities for sectarian or criminal motives – on account of their perceived wealth – or a combination of both. The same source is further cited [at 5.1.2] as follows:

5.1.2 … ‘Persons considered as contravening strict interpretations of Islamic rules in terms of dress, social behaviour and occupations, including atheists and secular-minded individuals, women and members of religious minority groups, are reported to face abduction, harassment and physical attack by various extremist armed groups and vigilantes.’

5.1.6 The USSD 2020 IRF report stated: ‘Representatives of minority religious groups continued to state that while the central government did not generally interfere with religious observances and even provided security for religious sites, including churches, mosques, shrines, and religious pilgrimage sites and routes, local authorities in some regions continued to verbally harass and impose restrictions on their activities. ‘…Leaders of non-Muslim communities continued to state that corruption, uneven application of the rule of law, and nepotism in hiring practices throughout the country by members of the majority Muslim population continued to have detrimental economic effects on non-Muslim communities and contributed to their decision to emigrate. ‘…There were continued reports that members of non-Muslim minority groups felt pressured by the Muslim majority to adhere to certain Islamic practices, such as wearing the hijab or fasting during Ramadan. Non-Shia Muslims and non-Muslim women continued to feel societal pressure to wear hijabs and all-black clothing during Muharram, particularly during Ashura, to avoid harassment. According to representatives of Christian NGOs, some Muslims continued to threaten women and girls, regardless of their religious affiliation, for refusing to wear the hijab, for dressing in Western-style clothing, or for not adhering to strict interpretations of Islamic norms governing public behavior . Outside the IKR, numerous women, including Christians and Sabean -Mandeans, said they opted to wear the hijab after experiencing continual harassment.’

14.
The CPIN also has a section covering the position of atheists which I set out in full:

7.1.1 UNHCR in its ‘International Protection Considerations with Regard to People Fleeing the Republic of Iraq’ published in May 2019 summarised that:

‘Although open atheism is extremely rare in Iraq, the number of atheists is reported to be on the rise. Although there are no laws prohibiting “atheism”, in some instances, atheists have reportedly been prosecuted for “desecration of religions” and related charges. Moreover, societal tolerance vis-à-vis atheists is reported to be very limited, as evidenced also by the public rhetoric of some politicians and religious leaders. For fear of rejection, discrimination and violence at the hands of their families, private vigilantes and conservative/ hardline religious groups, atheists are reported to often keep their views secret.

7.1.2 The EASO guidance note published in January 2021 stated:

‘Atheism is not illegal in Iraq, but State actors typically equate atheism with blasphemy. Although there are not any articles in the Iraqi Penal Code that provide for a direct punishment for atheism, the desecration of religions is penalised. In March 2018, arrest warrants were issued in Dhi Qar against four Iraqis on charges of atheism. According to COI sources, no recent examples of prosecution of atheists in the KRI have been reported.

‘In Iraq, atheists are reportedly viewed with disdain and face threats. It is reported that persons who openly admit they are not religious would risk arrest in, for example, Baghdad and the South, whereas in the KRI there would be more freedom of expression with regards to religious beliefs . According to COI sources, Kurds primarily identify themselves in terms of their ethnicity and not their religious affiliation. While atheism is rare in Iraq, the number of atheists is reportedly growing. ‘…Atheism is in general not well perceived in the KRI. However, according to some sources, it is somewhat more acceptable to be an atheist than an apostate. Criticism of religious functionaries in general is quite widespread in KRI and is not looked upon as something scandalous. Criticising Islam on social media, particularly on Facebook, has become something of a social trend in the KRI, whereas up until recently it was not acceptable. However, proclaiming oneself as an atheist publicly could cause problems. There have reportedly been cases in which atheists have been physically threatened, harassed or rejected by their families. According to COI sources, atheists who suffer harassment due to their beliefs prefer to hide than to report to the police. Although the Kurdish government is secular, society in general, especially in Erbil, is conservative and people are generally expected to respect Islamic norms.

7.1.3 An article published by NBC News in April 2019 entitled ‘Iraq's atheists go underground as Sunni, Shiite hard-liners dominate’ stated:

‘In a move that struck fear in Iraq’s small community of atheists, police in October [2018] arrested Ihsan Mousa, the owner of a bookstore in southern Iraq. They accused him of selling works that encouraged readers to reject Islam, according to local media reports. ‘Col. Rashad Mizel, a local police official, told NBC News that Mousa had been released after promising not to sell the offending books again.

7.1.4 Arab Weekly also reported on the arrest of Ishan Mousa in an article published in July 2019 entitled ‘Iraq’s growing community of atheists no longer peripheral’: ‘Bookkeeper Ihsan Mousa was arrested during a police raid on his library in late 2018. An official statement by the Directorate of Intelligence stated that the charge facing Mousa “is the attempt to promote and spread atheism.” ‘The community in the southern province of Nasriiya , where the incident took place, rallied behind Mousa. Iraqi writer Ahmad al- Saadawi criticised the arrest and the evolving saga “as trivial and stupid,” adding that “authorities are trying to build legitimacy under the imposition of a culture of prevention and control.”

15.
The Appellants further relied on a report by Alison Pargeter of King's College London. Ms Pargeter describes herself as an analyst and consultant specialising in political and security issues in North Africa and the Middle East. Neither the Respondent nor I take any issue with her expertise or objectivit y [2] . Ms Pargeter's report predates the CPIN by almost two years but her conclusions are largely the same as those of the authors:

" For the majority of Iraqis, Islam is viewed as a core component of Iraqi identity and is deeply entwined with social norms and traditions. As British journalist and author, Brian Whitaker, observes of religion in the Middle East, "religion in the Arab countries is not simply a matter of belief or disbelief, nor is it necessarily treated as a matter of personal choice. Islam has strong social aspects based around the concept of ummah – the community of believers – and expressions of individualism or nonconformity tend to be frowned upon…when someone breaks away from established norms – especially if they do so publicly – they are liable to be seen as damaging communal solidarity". Furthermore as Mark Lattimer of the Ceasefire Centre for Human Rights observed in 2017, "In Iraq, generally speaking, you are considered to be born into a religion and you will die in that religion – it is not just in Islam but also in most other religions in Iraq, that apostasy is not just frowned upon as an offence, but is seen as unnatural.

Despite Iraq having presented itself as a largely secular society under the Ba'athist regime, during the latter years of Saddam Hussain's rule, religion came to permeate public life. This was linked to increasing religiosity that had swept the region at the time. Since 2003, Islam has continued to pervade the public space, and the political arena. Political Islamist parties have dominated government structures, with the Islamic Dawa party taking the lead in successive Shi'ite coalitions .

…

Within this environment, it is very difficult for any Iraqi to publicly identify as atheist and doing so carries particular risks. Although Iraqi law does not explicitly punish atheism, there are a series of penalties laid out in the penal code for violating religious sensibilities….while these sanctions are rarely enforced and whilst arrests of atheists are extremely rare, the y do occur…"

16.
Ms Pargeter then gives details of the arrests mentioned in the CPIN before turning to how atheism is viewed by society in general:

" Yet the state aside, Iraqi society does not generally tolerate the idea of an individual not believing in God. Iraqi society is traditional and conservative, and anyone professing a lack of faith would be considered to be transgressing social norms. Although attitudes are somewhat more liberal in some of the more upmarket urban areas, in general the idea of an Iraqi being atheist is considered shocking and unacceptable. Indeed atheism is viewed as something foreign and imported, and as a threat to Iraqi society.

These kinds of views are reinforced and upheld by religious figures in Iraq. In 2017 influential Iraqi cleric and politician, Amar Al-Hakim, threatened to strike at atheism with an "iron fist" and quash it through "rational thought"….

Most Iraqi atheists therefore , conceal their lack of faith. As the New Humanist writes, 'very few people in Iraq openly identify as atheist due to the danger this poses, but many who do so have sought refuge overseas'. The Baghdad Post commented in 2019 'In Iraq, vocalising belief in atheism or

disbelief in Islam can be a death sentence’. One atheist medical student in Baghdad told NBC news in April 2019 ‘I am afraid of being discovered – then I would be killed…this may also harm my family, although none of them know that I don’t believe’. He told NBC that in order to avoid detection he deletes all searches on his computer and mobile telephone. Another atheist explained that whilst he had told his two older sons about his lack of belief, he had concealed it from his 14 year old because he feared he might talk to his friends and endanger the family”

17.
Ms Pargeter concludes her evidence on atheism by citing several examples of young Iraqis forced into exile or hiding for having expressed secular beliefs, and of one student at Al-Muthanna University who was expelled as a result o f comments he had posted on Facebook.

18.
As to the particular issues that might arise for the three female Appellants Ms Pargeter writes that whilst there are plenty of Iraqi women who do not wear hijab, women are in general “given far less freedom and independence than they are in the UK. They are expected to dress modestly or risk being subjected to sexual harassment and disapproval. They are also expected to go out in groups or to be accompanied by male family members, although attitudes are more relaxed in this respect in more affluent areas, where attitudes tend to be more progressive”. The societal expectation would be that the children would remain in the family home until they married and it would not be acceptable if the girls wanted to, for instance, live independently. Iraqi society is deeply patriarchal and women who challenge its norms are viewed as transgressing social codes. Ms Pargeter writes that in 2018 there was a spate of killings of westernised women who tried to challenge the status quo. These included the social media influencer and model, Tara Fares, who was shot dead in Baghdad, two women working in the beauty industry and a women’s rights activist, Souad Al-Ali, shot in her car in Basra.

The Refugee Claims

19.
Article 1A(2) of the Refugee Convention provides that a refugee is a person who :

“…owing to well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”.

20.
In order to succeed in their appeals the Appellants must therefore establish th e following:

- there is a real risk that they face harm serious enough to amount to persecution ;
- the reason for that harm would be for one or more of the five grounds enumerated in Article 1A(2) ; and
- that they are outside of Iraq owing to that fear

A Real Risk of Harm?

21.
Having had regard to the background evidence I am wholly satisfied that if this family were to be transplanted from Liverpool to Baghdad, and carried on living in the way that they live here, they would quickly encounter a range of problems.

22.
At the lower end of the scale they would , almost certainly, face social dis approbation and mistrust. The unveiled women would, according to the UNHCR and US State Department, at the very least face continual pressure to cover their heads - they would , for instance, be verbally insulted in the street for failing to do so. This harassment would become particularly intense, for all of the Appellants, during holy months such as Ramadhan and Muharram, where the failure to fast or wear black would mark them out as different. At the higher end of the scale, th ere is a real risk that this kind of harassment c ould escalate to harms serious enough to unarguably engage the Refugee Convention: persons considered as contravening strict Islamic rules relating to dress , and social behaviour generally, are reported to face harms including physical attack, abduction, and as the assassinations of women such as Tara Fares and Souad Al-Ali demonstrate, murder. Although the chances of prosecution by the state for an offence such as ‘blasphemy’ appears statistically small, it does remain a risk: EASO report that persons who openly admit they are not religious would risk arrest in Baghdad.

23.
These pressures are real and commonplace. Although there are women in Iraq who do not wear hijab, and there are certainly people who do not believe in God, it is clear from the country evidence that people from these minority communities routinely take active steps to protect themselves from such adverse attention . T he article cited by Ms Pargeter explains that “very few people in Iraq openly identify as atheist due to the danger this poses” ; the background information gives examples such as Christian girls who adopt black during Ashura or who wear hijabs to avoid adverse attention . The question then arises whether this family can , as a matter of law or reality, be expected to modify their behaviour in the same wa y: i s the United Kingdom obliged to protect this family’s way of life?

Is being ‘ westernised ’ a protected right?

24.
The term ‘westernised’ has featured in a number of country guidance cases, including notably for these purposes, SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) where the Tribunal accept that “ those not conforming to Islamic mores and wealthy or Westernised individuals” have an enhanced risk profile in the context of Article 15 (c) of the Qualification Directive [§314]. The term ‘Westernised individuals’ is not explained , but there is reference to those not conforming to conservative Arab dress codes [at §311]:

“we note reference at section 3.12 of the EASO report to the PMU enforcing ‘conservative standards on personal appearance’. There are reports of women being targeted – including in Baghdad – for un-Islamic dress”.

25.
In AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC) the Tribunal refers to EASO guidance concerned with people who have adopted “ideas that seem to be ‘un-Afghan’” [at §90], and to the increasing popularity among young people of “Western trends and influences (such as fashion, entertainment and tattoos)” [at §93]. In MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC) similar references a re made to fashion, and t o the evidence that someone with

“western” dress sense might be perceived by al-Shabaab to be “someone whose Islamic integrity has been compromised by living in a Western country” [at §406].

26.
What does it mean to be ‘westernised’? It is striking that a term that is used so frequently in this jurisdiction has never been more closely defined. I would suggest that this is because, like obscene material, it is because we ‘know it when we see it’ [3] . These appeals do however highlight how th at , somewhat amorphous , nature of ‘westernisation’ is in danger of obscuring our obligation to protect core entitlements.

27.
In the evidence before me ‘westernisation’ appears to amount to a fairly loose bundle of characteristics : an adherence to a particular set of values , a rejection of religion , and prominently, the freedom to enjoy a socially liberal way of life. The Appellants’ witness statements make repeated reference to the ir ‘western lifestyles’ and how they do not want to give them up. They mix freely with members of the opposite sex; they all accept A4’s relationship with her boyfriend; they go out and socialise without fear of saying the wrong thing; they cherish friendships with individuals of diverse backgrounds; they enjoy an unfettered range of entertainment and culture; the children will grow up free of the expectations placed upon them by Iraqi society, particularly in terms of gender roles and personal choices; the girls make it clear that they do not want to wear conservative Islamic clothing.

28.
It is easy to see how these matters – the composite parts of a private life - have come to assume such importance for the Appellants. Those social freedoms, which many of us take for granted, are particularly valued by those who face the prospect of a very different kind of life. Are t hey not , however, freedoms that the Appellants can reasonably be expected to relinquish in order to live safely in Iraq ?

29.
It is trite that the Refugee Convention has a more limited purpose than the Universal Declaration of Human Rights: it is not its function to protect people from social conservatism. As Lord Hope puts it in HJ (Iran) (FC) v Secretary of State for the Home Department [2010] UKSC 31 ; [2010] Imm AR 729 :

…Persecution apart, the Convention was not directed to reforming the level of rights prevailing in the country of origin. Its purpose is to provide the protection that is not available in the country of nationality where there is a well-founded fear of persecution, not to guarantee to asylum-seekers when they are returned all the freedoms that are available in the country where they seek refuge. It does not guarantee universal human rights. So the conditions that prevail in the country in which asylum is sought have no part to play, as matter of legal obligation binding on all states parties to the Convention, in deciding whether the applicant is entitled to seek asylum in that country: Januzi v Secretary of State for the Home Department [2006] UKHL 5 , [2006] 2 AC 426 , paras 16, 46. As Laws LJ said in Amare v Secretary of State for the Home Department [2005] EWCA Civ 1600 , [2006] Imm AR 217 para 31:

"The Convention is not there to safeguard or protect potentially affected persons from having to live in regimes where pluralist liberal values are less respected, even much less respected, than they are here. It is there to secure international protection to the extent agreed by the contracting states."

30.

It cannot be said that the contracting states agreed to offer a protected and unfettered right to enjoy ones life in the way that one would like: there is no human right to listen to a particular kind of music, drink alcohol or to wear jeans. A claim based simply on such matters could not, under the Convention, succeed. But is there not more at stake here?

31.
Integral to the Appellants' claim to be 'westernised' – and their collective decision to live their lives in the way that they do - are their values. All the adults speak of their abhorrence of extremism, and their support for a secular, democratic, society ; the family evidences a strong belief in gender equality. Whilst A4's decision to date her boyfriend, or to wear what she likes, are at first glance wholly personal matters, they are here expressions of a deeply held ideological belief. Such p olitical opinion is, uncontroversially , a characteristic capable of attracting protection under the international framework. N o dispute arises that there is a protected right not to believe in a god: see Article 10(1)(b) of the Qualification Directive (2004/83/EC) and Article 18 of the International Covenant on Civil and Political Rights 1966 . Similarly , it is well established that in certain circumstances the harms visited upon women can amount to persecution for reasons of their membership of that particular social group. Where, therefore, the Convention does not o ffer protection from social conservatism generally , it can do so in certain circumstances , here where the modifications required of the claimants amount to suppressions of the inalienable rights afforded to them by international law.

32.
There is another way in which 'westernisation' could entitle an individual to protection. In his evidence A1 very candidly explained that he might be able to "fake" being Muslim. He has , for instance, seen many Muslims at prayer throughout his life, and so knows the order in which you stand, bow etc. On further probing, however, he admitted that he had no idea what the words are. This highlights a discrete protection issue. E nvisage a claim which would prima facie fail on the grounds articulated by Hope LJ in HJ (Iran) and by Laws LJ in Amare : a man who, for instance, had no particular religious or ideological underpinning to his lifestyle, who simply enjoy s the freedom that life in the UK can offer . That man could quite reasonably be expected , as a matter of law, to simply conform to the norms and expectations of the society that he is going back to . The Convention is not there to protect him from having to live under a regime where pluralist liberal values are less respected than they are here. The question remain s whether it is possible for him to safely do that. If an individual has for instance been living in the UK for a very long time or is unfamiliar with the prevailing culture in his country of origin, there may always be the risk that his modified behaviour will slip, or he will not know how he is supposed to behave. I n a particularly hostile environment, such as those discussed in the country guidance cases I mention above, this could expose him to harm. It would the n matter little what he himself believed: the necessary nexus is created by the perspective of the persecutor.

33.
A claim based on 'westernisation' can therefore succeed in one, or both, of these ways. Although evidence about fashion, or entertainment preferences, appears at first glance to consist of little more than an appeal to pluralism , and thus lying entirely outwith the protection framework, th at evidence must be carefully assessed . First, to determine whether the lifestyle choices of the claimant are in fact an expression of beliefs prohibited or disapproved of in his country of origin . Second, whether there is a real risk of that claimant failing to effectively mask his 'western' identity and thus exposing himself to harm.

The Appellants' Claims

34.
A4 ’s claim succeed s on both counts . Having heard from her directly I accept without hesitation that she is actively committed t o , amongst other things, feminism and LGBT QI+ rights . I have no difficulty in accepting that A4 is a young woman who fervently believes in gender equality and tolerance, and that she is someone who speaks out on those issues in this country, using her platform as a prominent student at Liverpool to do so. If she behaved in that way in Baghdad, I accept that she would face a real risk of harm as a result. She would be viewed by extremists, and by society in general, as someone who was unashamedly challenging established social norms. The country background evidence establishes that young women who do that face a real risk of serious harm , up to and including death . She should not be expected to suppress her political beliefs in order to remain safe. I am in addition wholly satisfied that A4 would find it extremely difficult to hide her beliefs and identity. She is today 23 years old, and she has lived in this country since she was 6. Her entire education and socialisation has taken place in the UK. I accept that she is a fervent feminist who, for instance, rejects the institution of marriage. I am quite satisfied that there is a real risk that A4 would find it extremely difficult, if not impossible, to adopt and maintain a façade of being an obedient, ‘modest’ and religiously compliant Iraq woman. At some point, she would blow her own cover.

35.
Less straightforward, in respect of ‘political opinion’, are the position s of the other Appellants. In contrast to A4, none of these Appellants appear to be politically active or outspoken in this country. I do not have particular information relating to the political views, if any, held by A3. I have no reason to doubt the evidence of the adults that they are generally invested in values such as a belief in democracy and human rights, but these are not, of course, values that are the exclusive preserve of the ‘west’: it is doubtful that the 600 million Indians who last voted in the world’s largest democracy would regard that as an inherently ‘western’ act. A great many Iraqis also believe in democracy and human rights. The evidence does not support the contention that any of these Appellants would be moved to speak out about such issues, and I do not perceive there to be anything in the country background material indicating that simply holding such beliefs would give rise to a real risk of harm . I am accordingly not satisfied that A1, A2, A3 or A5 have demonstrated that they face a real risk of persecution in Iraq because they are democrats who believe in human rights.

36.
The First-tier Tribunal accepted, in a Devaseelan departure from the findings of an earlier Tribunal, that each of t he five Appellants are atheists. Having heard the evidence myself I unreservedly endorse that conclusion. Their evidence on this matter was heartfelt and sincere, and as I note above, it is consistent with the way that they lead their lives, unfettered as they are by religious prohibitions or ‘Islamic’ cultural practice such as gender segregation.

37.
Mr Tan acknowledged that the country material does highlight the persecution of atheists, but queried whether there was a real risk of such harm befalling this family. He pointed to the lack of evidence of overt assertions of atheism. They have all, with the possible exception of the outspoken A4, apparently taken their lifelong lack of faith as read: they may have had discussions amongst themselves or with good friends, but open promotion of their views does not appear to be central to their secular identity. N one of them have engaged in the kind of activity that led the bookseller Ihsan Mousa to be arrest ed on charges of blasphemy.

38.

I accept Mr Tan’s general point. These are not people who have joined the Humanists; nor are they passionately outspoken Dawkins -style critics of religion. They are just a family who have never believed in god, and who have quietly got on with it. Back in al-Mansur many of their contemporaries felt the same, and it was simply never an issue.

39.
As I noted in my initial ‘error of law’ decision, however, the Iraq of 2021 is very different from the Iraq that they left. Today religion permeates the public space, and although there remain, as Ms Pargeter puts it, “upmarket” communities in which an ambivalence towards Islam is tacitly acceptable , it remains the case that for the vast majority of Iraqis a lack of faith is regarded as something “shocking and unacceptable”. The evidence on the matter, set out in the CPIN, is unequivocal. The UNHCR report that ‘p ersons considered as contravening strict interpretations of Islamic rules in terms of dress, social behaviour and occupations, including atheists and secular-minded individuals, women and members of religious minority groups, are reported to face abduction, harassment and physical attack by various extremist armed groups and vigilantes’ . It is for that reason that atheists i n Iraq are “reported to often keep their views secret”.

40.
In that context an individual does not have to sell books, or shout on a street corner , to proclaim that he is not a Muslim: his lack of faith is apparent in his everyday actions. A1 will be regarded with curiosity if he permits his daughters to go out unchaperoned; that curiosity w ill rise to suspicion if he is never seen at mosque; suspicion w ould quickly escalate to hostility if the family fail to observe the fasts in Ramadhan or to don black during Muharram; that hostility could , at any time, give rise to persecution if , for instance, the women insist on remaining unveiled or the family’s attitudes lead to them being identified as particularly wealthy . I am satisfied that in these circumstances the members of this ‘westernised’ family do face a real risk of persecution because they are atheists . They do not wish to adhere to conservative Islamic norms because they fundamentally do not agree with them. They should not be expected to do so simply in order to remain safe . Nor am I satisfied that having lived the way that they do for this long, they would effectively be able to adjust to the extent that their atheism would not be apparent to outside observers .

41.
The Secretary of State did not advance an ‘internal flight’ argument in any of the appeals. It therefore follows that the appeals are all allowed on protection grounds.

The Human Rights Claims

42.
As I note above, the appeals of A1-A3 are allowed by consent. The Secretary of State accepts that it would not be reasonable to expect A3 to leave the UK, and that being the case there is no public interest in expecting her parents to go either.

43.
The human rights appeals of A4 and A5 remain to be determined. Neither place any reliance on a n Article 8 ‘family life’ but both assert that it would be disproportionate to interfere with the ‘private lives’ that they have established in the UK. The relevant rule is 276ADE(1), and the relevant sub-paragraph is (vi):

276ADE (1). The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:

(i) does not fall for refusal under any of the grounds in Section S-LTR 1.1 to S-LTR 2.2. and S-LTR. 3.1. to S-LTR.4.5. in Appendix FM; and

…

(vi)… is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK.

44.
It is evident from my findings on the protection grounds of appeal that this test too must be satisfied.

45.
A4 would face the obstacle of living in a " deepl y patriarchal" society when she rejects the patriarchy. She does not want to conform to gender roles. She wants to be a mathematician who lives with her boyfriend and who speaks out on issues that mean a lot to her. These are fundamental aspects of her private life which could not be replicated in Iraq. The obstacles that she could face in Iraq include assault, kidnap and murder but even if I am wrong in my interpretation of the country background material , and the risks of those serious harms are insufficiently high to meet the threshold of 'reasonably likely', they remain, uncontrovertibly, realities in contemporary Iraq. They would certainly have a chilling effect on A4's behaviour, and on her ability to express her identity in the way that she has done so far in her life. At the very least she would face ostracization, ridicule and harassment for being herself. I am satisfied that this would be disproportionate.

46.
A5 would, in these circumstance s , be the only member of his natal family living in Iraq, since his mother, father, and sisters would all be living in the UK. Although A5 is now an adult he is a young man who has never lived away from the family home. He and his parents and sisters are close. He continues to be an integral part of that family and to be emotionally , and so some extent financially , dependent upon his parents. Given that he wishes to continue his studies in mathematics to PhD level, that is very likely to be a situation that persists into the foreseeable future. At the outset of the hearing Mr Tan accepted on behalf of the Respondent that A5's relationship with his parents and sister was certainly protected by Article 8 in that it was a significant aspect of his private life. He further accepted that in the circumstances where A5 was the only Appellant left, his appeal under this heading would 'stand and fall' with A4's. If, as I understood it, that was a concession that it would be disproportionate to refuse to grant A5 leave on human rights ground s in line with the other four members of his family, then it would be a concession rightly made. A5 has lived in this country for 9 years. He has spent his formative years here and this was very apparent in his oral evidence: his enormous talent for maths aside, he is a very average 'British' twenty-f our year old. I am satisfied that like his sister, he would face very significant obstacles in integrating into contemporary Iraq. It is not the country he left as a child. It is a overwhelmingly religiously observant society where as a westernised atheist he would be seen as an 'outsider'. I am satisfied that it would therefore be disproportionate to refuse to grant him leave on human rights grounds.

Anonymity Order

47.
The Appellants are refugees and one of them is a child. As such 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 Rule 14 of the Trib u nal Procedure (Upper Tribunal) Rules 2008 in the following terms:

“ Unless and until a tribunal or court directs otherwise, or the Appellant’s protection claim is finally determined, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly ide ntify him, any of his witnesses 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 ”

Decisions

48.
Each appeal is allowed on protection and human rights grounds.

49.
There is an order for anonymity in respect of each Appellant.

Upper Tribunal Judge Bruce

1 st November 202 1

APPENDIX: ERROR OF LAW DECISION

Upper Tribunal

(Immigration and Asylum Chamber) Appeal Numbers:

THE IMMIGRATION ACTS

Heard on: 24 th November 2020	**Decision Promulgated**
At: Civil Justice Centre (remote hearing)	
	……

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

YMKA (A1)

FATA (A2)

WYMA (A3)

YYMA (A4)

AYAA (A5)

(anonymity direction made)

Appellants

and

Secretary of State for the Home Department

Respondent

For the Appellant: Mrs Johnrose , Broudie Jackson & Canter

For the Respondent: Mr Tan, Senior Home Office Presenting Officer

‘ERROR OF LAW’ DECISION

1.
The Appellants are all nationals of Iraq. Their appeals are linked because they are all members of the same family. The first appellant (A1) is the father, A2 is the mother, A3 is their daughter aged 14, A4 is a daughter aged 21, and A5 is a son aged 23. They all seek protection and/or leave to remain in the United Kingdom on human rights grounds.

2.
This is a family who left their native Baghdad in 2006 in the aftermath of the fall of the Ba’athist regime. They spent a number of years living in the UAE before coming to the United Kingdom. The route to entry was through A4, who was granted a visa enabling her to attend boarding school in the United Kingdom. She has been here since she was six years old. Her mother and siblings arrived to visit her in March 2013, her father the following year. In very brief summary the case put for the Appellants before the First-tier Tribunal was that today they each have a well-founded fear of persecution in Iraq, and/or that it would be a disproportionate interference with their Article 8 rights to refuse to grant them leave. They aver that they are ‘westernised’ atheists who hold views antithetical to those prevailing in Iraqi society today.

3.
In three separate decisions (A1, A2 and A3 in one, A4 and A5 each received their own) the First-tier Tribunal (Judge Handler) dismissed all of the appeals on all grounds. Permission was granted to this Tribunal by First-tier Tribunal Judge Pooler on the 5th May 2020. Although there is only one set of grounds, it addresses each decision and so permission has been granted to each Appellant. Of the five grounds originally pleaded only four remain: two address the Tribunal’s Article 8 reasoning, and two are concerned with protection [4] .

4.
Before I address the grounds it is appropriate to note, by way of background, that Judge Handler was not the first First-tier Tribunal Judge to consider the position of this family. In March 2017 Judge Devlin had dismissed their linked appeals, finding the account advanced by A1 and A2 as to why they had left Iraq in 2003 not “worthy of credence”; nor did Judge Devlin believe that any of the family were atheists or that they would be at risk in Iraq as a result. Applying the guidance in Devaseelan [2002] UKIAT 702 Judge Handler had properly treated Judge Devlin’s decision as her starting point. She noted that the appeals came before her following the Respondent’s acceptance that the Appellants had made ‘fresh claims’. It was expressly agreed at the hearing that the ‘fresh claims’ were

based on both human rights and protection grounds. Judge Handler identified three areas in which new evidence or the passage of time warranted further judicial consideration:

i)
New documentary evidence had been produced relating to A1's involvement in the Ba'athist military regime in Iraq – like Judge Devlin before her Judge Handler found A1 to have failed to discharge the burden of proof as to his claims. There has been no challenge to that finding.

ii)
An expert report, and the evidence of various witnesses, was produced in respect of the Appellants' assertion that they are atheists whose secular values would place them at risk in Iraq today. Unlike Judge Devlin, Judge Handler was prepared to accept that the members of this family are atheists, but found no risk arising. The Appellants challenge the Tribunal's reasoning in respect of this matter.

iii)
The third Devaseelan issue is identified by Judge Handler as "ethnicity". The grounds adopt similar terminology. In fact what both refer to is the Appellants' Sunni identity – it seems to me that this is a matter of religious affiliation rather than ethnicity but the semantics are perhaps unimportant. The new evidence relied upon here was an expert report by Ms Alison Pargeter stating that the Appellants' family name is identifiably Sunni. Judge Handler accepted this, but not that the name would highlight any connection with Saddam Hussain, Tikrit or the Ba'athists. I deal with this issue below.

Error of Law: Discussion and Findings

5.
Given the complex nature of these appeals – five individual cases dealt with over two decisions raising common and discrete issues – I propose to deal with the grounds thematically, addressing first the matters pertaining to all of the Appellants.

HJ (Iran)

6.
A central plank of the Appellants' linked fresh claims was that as atheists they faced a real risk of harm from ultra- conservative Islamist elements in Iraq. Back in 2017 Judge Devlin had observed that the Appellants had failed to establish, with reference to expert or other country background material, that there was an objective risk of harm arising. Such expert country background evidence was duly produced.

7.
In her report of the 1 st October 2019 Alison Pargeter of King's College London writes that in Iraqi society faith in Islam is not seen as a matter of personal choice. For those born Muslim it is expected that they will die Muslim – apostasy is not just frowned upon as an offence, it is seen as unnatural. Although the country was nominally secular under Saddam Hussain since 2003 political Islam has come to dominate the public space, with the crossover between cleric and politician becoming increasingly blurred. Against that background there have been recent examples of atheists facing persecution for their beliefs. In 2018 four Iraqis were arrested and charged with offences such as "popularizing atheism"; in the same year a bookseller was arrested for similar offences and only released when he agreed to stop selling certain titles. Influential Shi'ite clerics have made public pronouncements threatening to strike at atheism with an "iron fist" and for society in general the idea

is “shocking and unacceptable”. Ms Pargeter provides several examples of Iraqis forced into hiding or exile for having expressed atheist, or even simply agnostic, views. She writes:

“Most Iraqi atheists therefore conceal their lack of faith. As the New Humanist writes, ‘very few people in Iraq openly identify as atheist due to the danger this poses, but many who do so have sought refuge overseas’. The Baghdad Post commented in 2019 ‘In Iraq, vocalising belief in atheism or disbelief in Islam can be a death sentence’. One atheist medical student in Baghdad told NBC news in April 2019 ‘I am afraid of being discovered – then I would be killed…this may also harm my family, although none of them know that I don’t believe’. He told NBC that in order to avoid detection he deletes all searches on his computer and mobile telephone. Another atheist explained that whilst he had told his two older sons about his lack of belief, he had concealed it from his 14 year old because he feared he might talk to his friends and endanger the family”

8.
Against this background, it is agreed, the Tribunal was required to apply the tests set out by Lord Rodger at paragraph 82 of HJ (Iran)(FC) v Secretary of State for the Home Department [2010] UKSC 31. Although that case was concerned with homosexuality, its principles must be applied to any case concerned with a core characteristic, such as religious belief, or as in this case, non-belief: RT (Zimbabwe) (FC) v Secretary of State for the Home Department [2012] UKSC 38, PS (Christianity - risk) Iran CG [2020] UKUT 00046 (IAC) .

9.
The first question was whether the Appellants are, as claimed, atheists. This the Tribunal answered in the affirmative. No issue is taken with that finding.

10.
The second question was whether, on the available evidence, atheists living in Iraq would be liable to persecution if they lived openly. The Tribunal’s answer to that question is found at paragraph 75 of the decision relating to A1-A3:

“I find no reason to depart from the findings of Judge Devlin that the country background information does not support the view that atheists who live openly in Iraq are liable to persecution and that it suggests that only those who are outspoken or who openly express their opinion in public who are at risk…”

11.
The grounds challenge that Devaseelan conclusion on the grounds that the decision reflects only a partial reading of Ms Pargeter’s report. That may well be true but in fact there is a more fundamental problem with the reasoning. Lord Rodger’s framework for enquiry requires decision makers to here consider the notional question of whether those who live “openly” as atheists in Iraq would face persecution. The answer to that question, as the Tribunal appears to accept, is that they would: “only those who… openly express their opinion… are at risk” (I here omit the otiose “outspoken”). Contrary to its own interpretation, the Tribunal does in fact depart from the findings of Judge Devlin in so finding.

12.
The final HJ question was this:

If so, the tribunal must go on to consider what the individual applicant would do if he were returned to that country. If the applicant would in fact live openly and thereby be exposed to a real risk of

persecution, then he has a well-founded fear of persecution - even if he could avoid the risk by living "discreetly". If, on the other hand, the tribunal concludes that the applicant would in fact live discreetly and so avoid persecution, it must go on to ask itself why he would do so…"

13.
In its attempt to answer that question the Tribunal made what I regard to be two discrete errors. The first is in the self-direction at paragraph 74 of the decision relating to A1-A3 that the Appellants be required to demonstrate that it is of "particular importance" to them to be able to "openly declare their opinions in public". I am unclear as to why the Tribunal elevated the test in that way. It had already accepted that in fact the Appellants do speak openly about their lack of religious belief to friends and others in this country: there was no additional requirement to prove that it was of fundamental importance to them to be able to do so. The Tribunal had simply to assess how that behaviour might change upon return to Iraq, and why it might change.

14.
The second error is in the reasoning at paragraph 77 of the same decision. The Tribunal here gives weight to the fact that prior to their departure from Iraq A1 and A2 "lived a non-religious life". Whilst this might be a relevant factor in many other HJ enquiries, I am satisfied that on the facts of this case it was wholly immaterial. A1 and A2 last lived in Iraq when they were part of a wealthy Sunni elite whose secular identity found expression in Ba'athism, the protected ideology of the state. As the report of Ms Pargeter makes clear, two decades later Baghdad is a very different place. The prevailing political, and social, climate is defined by religious conservatism, and fanaticism. In those circumstances how these Appellants behaved twenty years ago is of minimal, if any, significance.

15.
For the foregoing reasons I am satisfied that the Tribunal's approach to the question of risk arising from atheism was flawed for error of law and I set it aside to be remade.

'Westernisation'

16.
The second protection-based ground is that the First-tier Tribunal mischaracterised, or misunderstood, the basis of the claims. The First-tier Tribunal proceeded [5] on the basis that the Appellants did not advance their protection claims on the grounds of what is termed their "westernized lifestyles". Accordingly no finding is made on whether any risk might arise. Ms Johnrose , who appeared below, points to the Appellants' witness statements, the expert report and submissions she made at the hearing to firmly assert that the Appellants' "westernisation" was very much an issue in the asylum appeals. For instance, A2 refers to her daughters never having worn hijabs, to her eldest daughter having a boyfriend and to these kind of behaviours being regarded as "shameful" in Iraq. Ms Johnrose denies having made the concession recorded by the First-tier Tribunal and submits that there is error in the Tribunal having confined its consideration of "western" norms only to the Article 8 paradigm.

17.
Given the contents of the witness statements I am prepared to accept that the case on this point may have been misunderstood by the Judge. I think it possible that Ms Johnrose indicated that she did not put her case solely on the basis of 'westernisation' but it is very difficult to see why she would abandon this plank of her case altogether, given that it is such a prominent feature of the witness statements, and expert report. The term is used repeatedly, and Ms Johnrose assures me that she

placed reliance on paragraphs 311 and 314 of SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) to the effect that “being Westernized” remains a risk factor .

18.
It follows that the Tribunal’s misunderstanding of that position has led to unfairness: the Tribunal failed to weigh that - apparently uncontested – factor in the balance when assessing risk.

19.
I would add this. Even if Ms Johnrose had explicitly disavowed any reliance on this feature of the case it seems to me that there is some confusion about what the term actually means. It has featured in a number of country guidance cases, including notably for these purposes, SMO , where the Tribunal accept UNHCR’s recommendation that it be categorised as a risk factor: “people displaying western behaviour” [at §293 and §314]. Nowhere is ‘western behaviour’ defined, apart from an allusion to those not conforming to conservative Arab dress codes [§311]. It received slightly more detailed scrutiny in AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC) where the Tribunal refers to EASO guidance that refers to people who have adopted “ideas that seem to be ‘un-Afghan’” [at §90], and to the increasing popularity among young people of “Western trends and influences (such as fashion, entertainment and tattoos)” [at §93]. In MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC) similar references were made to fashion, but also to the notion that someone with “western” dress sense might be perceived by al-Shabaab to be “someone whose Islamic integrity has been compromised by living in a Western country” [at §406].

20.
It is striking that a term that is used so frequently in this jurisdiction has never been more closely defined. Perhaps, like obscene material, it is because we ‘know it when we see it’ [6] . These appeals do however highlight how the somewhat amorphous nature of “westernisation” is in danger of obscuring our obligation to protect core entitlements, under both the Refugee and Human Rights Conventions. This case was concerned not with the fashion choices made by the various Appellants, but with their ‘western’ political beliefs (feminism, secularism), membership of a particular social group (women) and their right to personal autonomy (in their relationship choices). Insofar as all of that could be brought under the umbrella ‘westernisation’ it was plainly relevant.

Best Interests of the Child

21.
At the date of the appeal before Judge Handler A3 was a matter of days away from reaching the point where she had spent seven continuous years in the United Kingdom, with the result that she would be deemed to be a “qualifying child” as defined at s117D of the Nationality, Immigration and Asylum Act 2002. Had she reached that point, the Tribunal would have been required to consider whether it would be “reasonable” to expect her to return to Iraq: although paragraph 276ADE(1)(iv) of the rules could not be directly applied because of its temporal restriction, it set the benchmark for consideration of proportionality. Given the accepted facts it is difficult to imagine that this threshold would not have been reached: she has never lived in Iraq, is extremely fearful of going there, currently speaks little to no Arabic, has spent her formative years in the United Kingdom, refuses to adhere to Islamic norms and is suffering from mental health issues.

22.
The seven-year mark not yet having been reached however, the Tribunal said nothing about reasonableness. It instead embarked on a broader proportionality exercise of the type conducted in EV (Philippines) [2014] EWCA Civ 874. The grounds criticizing its decision to do so are not entirely

clear. There is said to be “material misdirection” in the “omission to undertake an appropriate assessment” but it is plain from the decision that the Tribunal emphatically did conduct an appropriate assessment, in fact concluding at its §80 and §91 that it would be in A3’s best interests to remain in the United Kingdom with her parents, and that this is a matter which carries “significant weight” in the balance against the public interest. I am unable to detect any error in approach there. The grounds further suggest that there is some perversity in the Tribunal’s conclusion that as a young and intelligent young woman A3 would be able to learn Arabic if she returned to Iraq. It is said that there was no evidential foundation for that finding. I am wholly satisfied that this was a finding open to the Tribunal. In the absence of any evidence that A3 had, for instance, a learning disability there was absolutely no reason to suppose that she was any different from the many millions of child migrants throughout history who have moved to new countries and learned new languages as they did so.

23.
I can find no error in the Tribunal’s approach to A3’s best interests. It found that her best interests indisputably lay with her remaining in the United Kingdom with her parents. That was, on the facts, a rational and evidence-based conclusion. The drafting in the grounds notwithstanding it seems to me that the real complaint is that the Tribunal found those best interests outweighed by the public interest. The argument as to why it may have erred in so doing is not however articulated. Reference is made to the decision in Kamara v Secretary of State for the Home Department [2016] EWCA Civ 813 and to the test at s117C(4) Nationality, Immigration and Asylum Act 2002 that deportees must establish that they are “socially and culturally integrated in the United Kingdom”, and it is submitted that the Tribunal failed to apply these considerations. That argument is wholly misconceived. A3 is not a foreign criminal and so s117C(4) had absolutely no application to her. In any event it is clear from the reasoning overall that the Tribunal found in her favour on that matter: she plainly is socially and culturally integrated in the United Kingdom and I do not perceive anyone to have ever argued otherwise. The Tribunal’s decision on proportionality is not one that every decision maker would have reached. On these facts it is certainly not one that I would have reached. It is however one that is unimpeached for any error of law.

Very Significant Obstacles

24.
For the adult Appellants the first port of call when considering Article 8 was paragraph 276ADE(1)(vi) of the rules which provides that leave to remain will be granted where it can be shown that there are “very significant obstacles to integration”. Given that the factual matrix pertinent to this question overlaps considerably with the argument about the family’s “westernisation” and atheism it follows from what I have said above that this part of the decisions will need to be set aside to be remade. I would however point out that the grounds are once again misconceived in their reliance on Kamara : the Appellants were not required to demonstrate that they were socially and culturally integrated in the United Kingdom. It is therefore hardly surprising that the Tribunal made no reference to that test.

Conclusions and Directions

25.
I am satisfied that in its decisions on each protection claim the Tribunal erred in its approach to atheism and ‘westernisation’. I set those parts of the decisions aside to be remade. For the same reason I set aside the decisions of A1, A2, A4 and A5 insofar as they relate to the test at 276ADE(1)(vi) of the Rules.

26.
The findings on A5's alleged homosexuality are unchallenged in these appeals and are therefore to stand.

27.
I am satisfied that in its decision on the 'best interests' of A3 the Tribunal did not err in law. Its decision that it would be in the best interests of A3 to remain in the United Kingdom with her parents is to stand. Given that undisturbed finding, and the passage of time since the appeal before the First-tier Tribunal, the Respondent may wish to review her decision. Applying the Respondent's own policy to the findings made by the Tribunal it is clear that A3 would today have a prima facie fresh claim under paragraph 276ADE(1)(vi): see my §21 above. Should she succeed on that ground it would follow that her parents would succeed on Article 8 grounds, applying s117C(6) Nationality, Immigration and Asylum Act 2002. In the hiatus between this decision and the resumed hearing the Respondent is directed to consider whether she is prepared to review the Article 8 cases of A1-A3 in light of my observations. The Respondent is to inform the Tribunal and the Appellants no later than the 1 st February 2021 whether she intends to undertake such a review, and if so, give an indication of how long it might take. I will not list the resumed hearing before then.

28.
I add this. The Tribunal made two further findings which may, in the final analysis, have some impact on the outcome of these appeals. The first was that no risk arises to the family because of their "immediately recognisable" Sunni names. I have already found that the protection risk assessment was flawed for the failures identified above, and upon remaking I will be bound by the country guidance to holistically re-evaluate all of the potential risk factors, which must include the Appellants' Sunni identity: BA (Returns to Baghdad) Iraq CG [2017] UKUT 00018 (IAC). The second is the finding that A4 and A5 do not share a family life with their parents and sibling. For my part I found the reasoning on this matter to be tenuous, given the still young age of these Appellants. The finding was however unchallenged and must stand. I do however mark that the relationships certainly fall within the rubric of private life, and upon remaking each of the Article 8 appeals I will be bound to evaluate the evidence as it stands before me at the date of hearing.

Upper Tribunal Judge Bruce

30 th December 2020

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[1] Appended.

[2] As to this it should be noted that Ms Pargeter's report rejects key elements of the account originally advanced by the Appellants. In particular she does not accept A1 's fear that he would face persecution due to previous association with the Ba'athist regime or that the overtly Sunni names of A1 and A2 would in themselves give rise to a risk of harm .

[3] Per Justice Potter Stewart in Jacobellis v. Ohio 378 U.S. 184 (1964)

[4] A fifth ground, alleging unfairness, was withdrawn by Ms Johnrose at the hearing.

[5] See for instance paragraph 2 0 decision relating to A1 -A3 ; paragraph 8 relating to A4.

[6] Per Justice Potter Stewart in Jacobellis v. Ohio 378 U.S. 184 (1964)