



(IMMIGRATION AND ASYLUM CHAMBER)

UPPER TRIBUNAL  
APPEAL NUMBER: PA/02862/2018

THE IMMIGRATION ACTS

Heard at: Field House  
On: 15 November 2018

Decision and Reasons Promulgated  
On: 6 December 2018

Before

Deputy Upper Tribunal Judge Mailer

Between

FOUAD [D]

ANONYMITY DIRECTION NOT MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr P Bonavero, counsel (instructed by Virgo Solicitors)

For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Lebanon, born on 2 January 2000. He appeals with permission against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision refusing his asylum, and human rights claims. The decision was promulgated on 24 May 2018.
2. The First-tier Tribunal Judge found that the appellant is an economic migrant. His immediate family members have colluded and connived at his arrival into the UK [15 (viii)]. Even if he had accepted the appellant's core account that there is a real risk of his facing harm, there would be a sufficiency of protection. There was nothing about the appellant's personal circumstances which would make it unduly

harsh for him to relocate to a predominantly Sunni Muslim area within Lebanon.  
[19]

3. On 11 October 2018, Upper Tribunal Judge Finch granted the appellant permission to appeal. She found that the First-tier Tribunal Judge failed to provide any reasons for his finding that the appellant's father had no conversation or discussion with the leaders of Hezbollah about the sexual attack on the appellant. He also failed to take into account objective evidence relating to the influence exerted by Hezbollah in Lebanon.
4. She thus found it arguable that he did not consider the evidence before him in the round before dismissing the appellant's appeal.
5. Mr Bonavero, who did not represent the appellant before the First-tier Tribunal, adopted the grounds of appeal, A-B.
6. He referred to the findings at [15]. The finding at [15(ii)], that he was "buggered" by at least one young male person was a 'misstatement'. He had in fact been raped.
7. He submitted that the finding at [15(iii)], that there would be adequacy of protection for the appellant against "common criminals or those who commit sexual offences," fails to properly identify the nature and character of the appellant's claim. The appellant had asserted that the sexual offences committed against him had been politically motivated by Hezbollah, given that he is a Sunni Muslim. The correct issue therefore is whether there would be adequacy of protection against Hezbollah.
8. Further, the Judge erred in finding that the appellant's claim that the sexual attack perpetrated on him had been by members of, or in some way associated with, Hezbollah, was not based on any proper foundation but was an assumption on his part.
9. Mr Bonavero submitted that the appellant's evidence on this point establishes that that finding was "problematic". The appellant had in fact explained why they were from Hezbollah.
10. In the appellant's statement in the respondent's bundle at B1, the appellant stated that on 16 April 2017 he was close to his home and saw "some Hezbollah" on the street. They called him to come to them. They told him to come and play "bride and groom", a famous sexual game. He then was shy about what happened and ashamed. He stated that he had seen them around and they carry weapons and he knew they were Hezbollah.
11. Again, at paragraph 5, the appellant referred to an incident on 29 April 2017. They told him that he was Sunni and that he was dirty and they wanted them out of the area. They held him down "and I was raped".
12. Mr Bonavero referred to question 23 of the appellant's interview where he was asked to explain the incident on 16 April 2017 in greater detail. The appellant there

referred to Hezbollah, stating that they were wearing black dress and most of the time they ride motorbikes. These motorbikes do not have a numberplate. There is nobody who rides a motorbike without a plate, except them.

13. He was again asked at question 32 how he knew who they were when he saw them. He replied that it was because of the clothes they wear. After they raped him, one of them said they do whatever they want in the country. He had to leave the country so the country could be left for them only. He believes he was targeted because he is Sunni.
14. In his reply to question 39, he stated that people from Hezbollah knew he was Sunni as they have their own intelligence. In Lebanon it is easy to know from the surname of your family whether they are Sunni or Shia.
15. In the circumstances, Mr Bonavero submitted with regard to the finding at [15(v)], that the Judge did not have regard to the appellant's evidence. He did give a proper foundation for his assertion that they were from Hezbollah.
16. With regard to [15(vii)], the Judge appears to have rejected the appellant's evidence that his father had approached the leader of Hezbollah to complain about his treatment regarding the sexual assault on his son. The Judge found that the appellant's father had no conversation or discussion with any leader of Hezbollah
17. Further, the Judge's finding that the appellant is an economic migrant in a context where he had accepted that he was a child who had been raped, is not "an attractive finding." Having accepted the factual matrix of abuse, such a characterisation of his claim was inappropriate.
18. Mr Bonavero referred to the Judge's findings at [16], regarding sufficiency of protection. The Judge stated that no country can guarantee the safety of its citizens so that none of them will ever be the victim of criminal activity. That is not what is meant by "sufficiency of protection." However, this was a political act committed by non-state actors.
19. At [17] the Judge found that no argument was put before him, let alone supported by appropriate evidence upon which an argument that there was an insufficiency of protection for citizens who were targeted by Hezbollah, could be properly founded. Mr Bonavero submitted that there had been such evidence. At page 8 of the appellant's bundle before the Tribunal, the executive summary of the USSD Lebanon Report, 2017, noted that civilian authorities maintain control over the armed forces and other security forces, although Palestinian security and militia forces, the designated foreign terrorist organisation Hezbollah, and other extremist elements, operated outside the direction or control of government officials.
20. He referred to the executive summary at page 37 (of 49) of the report from Crisis Group Middle East dated 20 July 2015. The executive summary states that massive military and organisational strength has discouraged or quelled any attempt to challenge Hezbollah.

21. Mr Bonavero also submitted that the finding at [18] that the appellant could internally relocate to a predominantly Sunni Muslim area within Lebanon fails to factor into the assessment of “unduly harsh,” that the appellant has been the victim of sexual abuse when he was 17 years old.
22. In that regard, he referred to the letter from Sarah Temple Smith, the Integrative Counsellor and Play Therapist and the manager of the Refugee Council's, My View Children's Therapy Project. They offer short term (up to 12) sessions of personal counselling for separated child refugees under 18 years.
23. She met the appellant for 12 therapy sessions between October 2017 and February 2018. She set out his presentation, noting that it was clear from his narrative that he felt that he held a very real fear for his safety both in Lebanon and in the UK. His descriptions of a traumatic event were consistent in their detail and his physical presentation while sharing the narrative. She referred to the symptoms of post-traumatic stress including flashbacks, re-experiences of the trauma and somatic responses to the trauma. The outcomes of his assessment were set out at page 1 of her report.
24. Mr Bonavero submitted that this should have been properly evaluated and assessed. In finding that there would be openings for the appellant for jobs and employment opportunities in Lebanon, the Judge did not recognise the impact of the appellant's experiences upon him.
25. On behalf of the respondent, Mr Lindsay adopted the Rule 24 response where it is contended that in assessing the claim at its highest, the First-tier Tribunal Judge specifically noted the absence of background evidence relating to claimed sufficiency of protection. The grounds of appeal failed to address the Judge's observation that no such argument was relied upon in order to establish that the material could have materially undermined the Judge's conclusion given that he does not suggest that Shia Hezbollah retained significant influence over all of Lebanon. Accordingly, no material error has been disclosed regarding internal relocation to a Sunni majority area.
26. With regard to the letter relied upon by the appellant, there had been no diagnosis of PTSD. Limited weight only could be attached to that. He referred in particular to [16] where the Judge stated that counsel who represented the appellant, without reference to any relevant evidence on the issue, simply asserted that there would not be a sufficiency of protection because there was no guarantee that harm would not befall the appellant.
27. Moreover, the findings at [18] regarding help being given to him by his parents and his ability to find suitable employment, were not challenged. Accordingly the Judge made sustainable findings as to appropriate safe areas. There was nothing to show that the appellant would not be able to go to a Sunni area in Lebanon.
28. In reply, Mr Bonavero submitted that the letter should have been given proper weight. There is no indication of the Judge's approach to the letter. That letter was

critical with regard to the issue of internal relocation. The author has had considerable experience. She saw the appellant on 12 occasions. She described his condition and how he was affected. She set out his symptoms at page 2, which were PTSD symptoms.

29. Given his history, the assertion that they can simply be ignored does not give proper effect to the current state of the law. No exercise or assessment was undertaken as to whether his condition, as described, would affect his return or his ability to relocate internally.
30. The contention that the Judge considered background evidence is not borne out from the determination. In any event, it is clear that he has not looked at it properly. He has in fact said nothing about it.

### Assessment

31. In his witness statement, the appellant stated that when he returned home on the first occasion he was sexually assaulted, but did not tell his family what happened as he was shy about that and was ashamed.
32. However, on the second occasion he was raped, namely, on 29 April 2017, he told his father what had happened. Five days later his father managed to speak with Hezbollah. His father and some of his friends who knew one of the leaders in the area, went to meet the leader. His father was told that the appellant was lying and he should not repeat or spread lies about Hezbollah. He said if the family kept quiet then they would not be in danger. He told his father that they would not guarantee his safety.
33. Given that evidence, the Judge has not given any reasons for his finding that the appellant's father had no conversation or discussion with any leaders of Hezbollah about the sexual attack. In addition, the appellant has identified his assailants as persons associated with Hezbollah. He has thus given a proper foundation which does not amount to 'a matter of assumption on his part' for claiming that they were members of Hezbollah. This was moreover a politically motivated attack based on the fact that he was a Sunni Muslim.
34. There was also evidence produced before the Tribunal that in Lebanon there is not a sufficiency of state protection for its citizens. In addition, contrary to the Judge's finding at [17], it was asserted that the organisation and/or its members were above the law.
35. Finally, although the Judge did refer at [14] to the letter from Sarah Temple Smith, he did not deal with any of her contentions as part of his assessment of whether, having regard to the appellant's personal circumstances, his return would be unduly harsh.
36. I accordingly find that the decision of the First-tier Tribunal Judge involved the making of an error on a point of law. I accordingly set it aside.

37. Mr Bonavero submitted that the appeal should be remitted. I have had regard to the Senior President's Practice Statement regarding the remitting of an appeal to the First-tier Tribunal for a fresh decision.
38. In applying that approach, I am satisfied that the extent of judicial fact finding which is necessary in order for a decision to be re-made is extensive. There will be a complete re-hearing with no findings preserved. I have also had regard to the overriding objectives and find that it would in the circumstances be just and fair to remit the case.

**Notice of Decision**

The decision of the First-tier Tribunal is set aside.

The appeal is remitted to the First-tier Tribunal (Hatton Cross) for a fresh decision to be made by another Judge.

Anonymity direction not made.

Signed

Date 30 November 2018

Deputy Upper Tribunal Judge C R Mailer