



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/02862/2018

**THE IMMIGRATION ACTS**

Heard at Field House, London  
On Thursday 12 December 2019

Decision & Reasons Promulgated  
On Tuesday 24 December 2019

Before

UPPER TRIBUNAL JUDGE SMITH

Between

F A  
[Anonymity direction made]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr D Wand, Counsel instructed by Virgo Solicitors  
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

An anonymity direction was made by the First-tier Tribunal Judge. The appeal involves a protection claim. Accordingly, it is appropriate to make an anonymity direction. Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent.

**DECISION AND REASONS**

## **BACKGROUND**

1. The Appellant appeals against the decision of First-tier Tribunal Judge Wylie promulgated on 11 September 2019 (“the Decision”) dismissing the Appellant’s appeal on protection and human rights grounds. The appeal had been dismissed on a previous occasion, but that decision was set aside by the Upper Tribunal in December 2018 and was remitted for redetermination.
2. The Appellant is accepted to be a Sunni Muslim from Lebanon. It was accepted by the Judge that the Appellant had been sexually assaulted by men who appeared to be members of Hezbollah. The Appellant says that the assault was based on his religion. He says that he would therefore be at risk on return to Lebanon. He also says that he told others about the assault, that his father met with the Hezbollah leader who told him that he should not speak of this incident as it would discredit Hezbollah and that the Appellant’s safety could not be guaranteed if he returned.
3. The Judge did not accept that the Appellant had told others about what had happened to him and found that he would not be at risk on that account. She also concluded that the background evidence did not show that Hezbollah target Sunni Muslims. The Judge concluded that there would be a sufficiency of protection against further incident if the Appellant faced problems from Hezbollah and that the Appellant could internally relocate away from Shia dominated areas of Lebanon should the need arise.
4. As a starting point, the Appellant emphasises that the Judge has found to be credible the Appellant’s claim to have been subject to a sexual assault by Hezbollah. The Appellant says that this is relevant as the Judge accepts past persecution; it is said that it is implicit in the finding that the Appellant was targeted due to his religion. It is said that the Judge’s finding that the Appellant would not be at risk is irrational viewed in that context. It is also submitted that the Judge misunderstood the background evidence concerning the influence of Hezbollah within Lebanon and that, when looking at internal relocation, the Judge failed to take into account the Appellant’s past experiences.
5. Permission to appeal was refused by First-tier Tribunal Judge Chohan on 22 October 2019 in the following terms so far as relevant:
  - “... 2. The grounds appear to challenge every aspect of the judge’s findings.
  3. However, when one considers the judge’s decision as a whole, it is apparent that the judge duly considered the facts and evidence in the case and the overall findings made were open to the judge. In my view, the judge has given adequate reasons.
  4. The grounds are nothing more than a disagreement with the judge’s findings. There is no arguable error of law.”

6. The Appellant renewed his application to the Upper Tribunal. By a decision dated 11 November 2019, Upper Tribunal Judge Gill granted permission for the following reasons:

“Judge of the First-tier Tribunal Wylie accepted that the appellant had been raped. Ground 1 contends that she must also have accepted his evidence that he was targeted due to his religion because he gave evidence that the perpetrators had told him at the time of the incident that he was Sunni and dirty and that they wanted “them” out of the area (para 16 of the judge’s decision).

At para 71, the judge referred to the incident as a “sexual crime” which does not assist in deciding whether she accepted his evidence summarised at para 16. The judge’s reasoning at paras 78 and 80 appears to suggest that she did not consider that the appellant’s religion was a factor. Nevertheless, in my view, it is arguable that it is not clear whether the judge had accepted the evidence that the appellant was targeted because of his religion.

It is arguable that, if the motivation for the incident was the appellant’s religion, this may be relevant in deciding the sufficiency of protection and internal relocation. In that case, the judge arguably failed to take this factor into account when deciding sufficiency of protection and internal relocation.

All the grounds may be argued.”

7. The Respondent contends that the Decision does not contain a material error of law for the following reasons:

“...3.It is submitted that whilst the FTTJ accepted the account of the appellant being attacked, the central issue was risk on return. A holistic reading of the determination shows that the FTTJ rejected the claimed account of events that is said to have happened after the attack. Having identified that the appellant is a Sunni Muslim (as are his family members), the FTTJ noted that there has been no further action taken against the appellant or his family in his absence, the objective evidence did not demonstrate that Sunni Muslims (a comparable percentage of the population to Shia Muslims [53]) are targeted by Hezbollah at [77], the family of the appellant have been able to take employment and move freely within the state, and the appellant was able to leave Lebanon without issue. Given these circumstances, it is clear that the attack whilst accepted was not one which was motivated purely by the appellant’s religion.”

8. The matter comes before me to determine whether the Decision contains a material error of law and, if it does, to re-make the decision or remit the appeal to the First-tier Tribunal to do so.

## DISCUSSION AND CONCLUSIONS

### Ground One

9. The Appellant claims to have been raped on account of being a Sunni Muslim. His evidence about the core of his claim is as follows (statement dated 13 November 2017 at [B1-2] of the Respondent's bundle):

"4. On 16<sup>th</sup> April 2017 I was playing football with my friends and I was returning home at 9 or 10pm. I was close to my home, the street behind. I saw some Hezbollah on the street and they called for me to come to them and they would make sure that I had fun (in a sexual way). They told me come and play bride and groom (this is a famous sexual game). Then I ran away and went home. I didn't want to tell my family what happened because I was shy about what had happened and ashamed about what they had said. I had seen them around and they carry weapons, etc and I knew that they were Hezbollah.

5. On 29<sup>th</sup> April 2017, I was going home again. I had not seen them in the meantime. When I went back home they were there and they pushed me to the wall in a side road and they tried to grab my genitals. There were five of them. They tried to take my clothes off and put my hand on their sexual organs. They said that I was Sunni and I was dirty and they wanted us out of their area. I began shouting and I pushed them. They held me down and I was raped. After I ran away and went home. They warned me not to tell anyone what had happened."

10. The Judge accepted at [60] of the Decision that the Appellant "was subjected to rape by one or more men who appeared to be members of Hezbollah". However, as she recognised in the following paragraph, the issue is whether this attack would give rise to risk on return to Lebanon.
11. The Appellant's first complaint about the Judge's findings in this regard is a failure to make a finding about the reason why the Appellant was attacked. The Appellant says that, since he had claimed that the attackers told him that he was "Sunni and dirty", and the Judge did not find that this was not credible but accepted his account, it must follow that it was accepted that the Appellant was targeted for that reason and yet at [89] of the Decision, the Judge refers to the incident as a "criminal assault". The Appellant also points out that the Judge accepted his account that his father had met with the local Hezbollah leader in relation to the attack (see [79] to [81] of the Decision).
12. The Appellant submits that whether there has been past persecution is relevant to future risk and asserts that the Judge having found the Appellant's account credible acted irrationally when concluding that he would not be at risk on return.
13. The Respondent does not accept that the Judge made a finding that the attack was motivated by religious reasons. She submits that the Judge accepted the

attack but did not accept what flowed from it and certainly did not accept the entirety of the Appellant's claim. The tenor of the asserted risk now is as stated by the Judge at [71] of the Decision:

"As I understand it the appellant's position is that he is at risk from Hezbollah because of his complaint of rape: were that to be publicised, and members of Hezbollah implicated in this sexual crime, the reputation of Hezbollah would be damaged. He was at risk of being killed to prevent this."

14. The Judge dealt with that risk in what follows. In particular, at [73] and [74] of the Decision, the Judge found as follows:

"73. The appellant described distress and embarrassment about the assault. He had not wanted to report the matter to the police because he did not want to tell about what he had suffered: he said in oral evidence '*as an Arab its not easy to go to police and report I'd been raped*'. I can understand that given his age and cultural background.

74. However there is such inconsistency in his evidence about making the assault known in the community, I cannot accept that he had done so, certainly not within the five days following the assault, before his father spoke to the Hezbollah leader"

Based on what is there said, the Judge went on to consider whether there continues to be any risk arising from the assault.

15. The Judge makes the point at [76] of the Decision that "[a]t no time has the appellant claimed that matters had escalated due to his making public his complaints to others". Whilst it is claimed that a threat was made from the Hezbollah leader, his father had spoken to that leader and the Judge found at [80] of the Decision that "[t]he family have not suffered any problems from the Hezbollah"([80]) and that "[i]t would seem that the leader has been satisfied that the father had indeed kept his mouth shut".
16. Whilst there is no express finding that the Appellant's assertion that the attack was religiously motivated is not credible, it is implicit in the Judge's findings at [77] of the Decision that she did not accept this. As she there says, "[t]here is no objective evidence that Sunni Muslims are specifically targeted by Hezbollah in Lebanon because of their faith". That is inconsistent with an acceptance by the Judge that the attack was motivated by religion. As the Respondent points out, the Appellant's grounds do not challenge that finding nor does the Appellant point to background evidence to the contrary.
17. At its highest, therefore, the Judge accepts that the Appellant was subject to a random attack by men who he believed to be from Hezbollah but his account that this was religiously motivated was not borne out by the background evidence. On that basis, the Judge was thereafter entitled to conclude that the attack was a "criminal assault". That conclusion is not irrational on the evidence.

## Ground Two

18. Even if I am wrong in my conclusions about the effect of the Judge's findings about the attack, as Mr Wand accepted, the Appellant also has to show that there is not a sufficiency of protection from the authorities in Lebanon. The Judge set out the evidence on this issue at [62] to [67] of the Decision. She made findings based on that evidence as follows:

“86. The appellant did not report the assault to the police. According to the USSD Report the Lebanese civil authorities maintained effective control over the Internal Security Forces (ISF) and the government had effective mechanisms to investigate and punish abuse: the ISF is responsible for law enforcement. The appellant said that he did not report to the police because Hezbollah were at the heart of the institution: this is not borne out by the objective evidence. It is more likely that the decision not to make the report was due to the nature of the crime.

87. The 2018 USSD Human Rights Report states (page 7) *‘Despite the presence of Lebanese and US security forces, Hizbollah retained significant influence over parts of the country. Neither the LAF nor the ISF controlled or attempted to control the interiors of 11 of the 12 Palestinian camps in the country ...’*

88. There is no reliable evidence that Hezbollah have significant influence over the ISF in the appellant's area.

89. I am satisfied that there is sufficient protection available in Lebanon for a person subjected to criminal assault such as the appellant.”

19. The starting point for the Appellant's ground two is a complaint that the Judge has irrationally categorised the assault as a criminal one rather than being motivated by religious reasons. That was the subject of ground one and I have already explained why the Judge was entitled based on her findings not to accept that element of the case.
20. The second point made is that the Judge has misunderstood the background evidence read as a whole. The Judge has cited from the USSD report at [87] of the Decision.
21. It is said that the Judge has erred at [66] of the Decision where she says that “from my reading of the USSD report, the law which cannot be enforced is that relating to freedom of movement, rather than the rule of law”. I am unable to accept the Appellant's submission in this regard. The point made about Hezbollah maintaining checkpoints in “certain Shia-majority areas” is clearly made in the context of “In-country Movement” and is clearly in the context of movement between areas. Moreover, that section of the report includes the following commentary:

“Government forces were usually unable to enforce the law in the predominantly Hizbollah-controlled southern suburbs of Beirut and did not typically enter the Palestinian refugee camps”

That is consistent with the extract cited at [87] of the Decision and therefore to the extent that the section does raise any issues about rule of law, that is dealt with within the citation at [87].

22. Whilst the extract cited from the USSD report might tend to support rather than undermine the Appellant's case, that extract also has to be read within the context of the USSD report taken as a whole which, although it indicates that "Hizballah, and other extremist elements operated outside the direction or control of government officials" contains a lengthy section immediately prior to the passage cited which deals with the effectiveness of the ISF and LAF.
23. Moreover, as the Respondent points out, the Judge found at [88] of the Decision that there was "no reliable evidence" about the influence of Hezbollah in the Appellant's own area. That stems from the point made at [67] of the Decision that "[t]here is no evidence from the appellant's father in a letter or affidavit setting out his contact with the local Hezbollah leader, **or giving information about the local area**" [my emphasis].
24. The Judge's finding that there would be a sufficiency of protection is therefore one open to her. As I have already pointed out, this ground arises in any event only if the Judge was not entitled to conclude that the attack was not religiously motivated. For the reasons I have already given, the Judge was entitled on the entirety of the evidence to conclude that it was a criminal attack. If the Appellant were to suffer any further problems of that nature, on the Judge's findings which were open to her, he could look to the authorities to protect him and take action against the perpetrators.

### **Ground Three**

25. The Appellant's third ground concerns the Judge's finding that the Appellant could internally relocate to avoid a risk if one exists. As such, based on what I say about grounds one and two, this does not arise. However, I deal with it for the sake of completeness.
26. The Appellant's complaint in this regard is that, in reaching her findings at [90] to [93] of the Decision that it would not be unduly harsh for the Appellant to relocate, the Judge has failed to factor in "the Appellant's personal circumstances including his past persecution, namely that he was subjected to a violent rape by members of Hezbollah for being a Sunni Muslim, a fact found by the Judge [§60], and the trauma that resulted therefrom" ([31] of the grounds).
27. I have already explained why I do not accept that the Judge has found that the Appellant was attacked by members of Hezbollah because of his religion. I have also explained why, once it is accepted that this was, as the Judge found, a criminal assault, the findings in relation to sufficiency of protection also overcome any future risk of further attack.

28. Although, as the Respondent points out, the Appellant does not say that the factors considered at [90] of the Decision were not those on which the Appellant relied, I accept that the Judge needed to consider internal relocation in the context of the overall claim. I accept that the Judge has failed to take into account in these findings that the Appellant was the subject of an attack which has had a traumatic effect on him ([5] of the Decision). Although the Judge did not accept that any special arrangements needed to be made at the hearing to deal with asserted vulnerability, as there was no medical evidence of any ongoing mental health problems ([7]), nonetheless, it was relevant to the issue of undue harshness what would be the impact of the Appellant in light of his personal circumstances, relocating away from his family within Lebanon and I accept that this is not considered by the Judge.
29. However, given my conclusions in relation to grounds one and two, any error in relation to ground three is not material as the Appellant can return to his home area to re-join his family there.

### CONCLUSION

30. For the foregoing reasons, I am satisfied that grounds one and two do not disclose any error of law. For those reasons, ground three does not arise. In any event, although I accept that there is an error disclosed by ground three, that error is not material.

### DECISION

**I am satisfied that the decision of First-tier Tribunal Judge Wylie promulgated on 11 September 2019 does not disclose an error of law. I uphold that decision with the consequence that the Appellant's appeal remains dismissed.**



Signed:  
Upper Tribunal Judge Smith

Dated: 17 December 2019