



**The Upper Tribunal
Immigration and Asylum Chamber)**

Appeal Number: AA/08925/2015

THE IMMIGRATION ACTS

**Heard at North Shields
On 21 July 2016
Prepared on 22 July 2016**

**Decision & Reasons
Promulgated
On 26 July 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE HOLMES

Between

**I. J.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Cleghorn, Counsel, instructed by Halliday Reeves Law Firm

For the Respondent: Ms Petterson, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Tunisia who entered the UK from Papua New Guinea as a work permit holder in July 2009. He became an overstayer in January 2010, and made his first application for protection on 8 June 2011. That application was refused on 5 January 2012, and his appeal was dismissed in a decision of First Tier Tribunal Judge Levin promulgated on 16 February 2012. His appeal rights against that decision were duly exhausted in 2012.

2. The Appellant then travelled illegally to Germany, which resulted in his return to the UK by the German authorities on 3 May 2013, whereupon he made a second claim for protection. That second application was refused on 29 May 2015, and a further decision was then made to remove him from the UK.
3. The Appellant's appeal against the decisions of 29 May 2015 was heard on 4 February 2016, and it was dismissed on all grounds, in a decision promulgated on 15 February 2016 by First Tier Tribunal Judge Griffiths.
4. The Appellant was granted permission to appeal that decision on 22 March 2016 by First Tier Tribunal Judge Simpson on the basis it was arguable the Judge's approach to the evidence before her was flawed.
5. Thus the matter comes before me.

Error of Law?

6. Both parties were agreed before me that the Judge's starting point ought to have been the decision of Judge Levin, who had found; (i) that the Appellant was an apostate, having converted from Islam to the Roman Catholic Church when he lived in Belgium, (ii) that the Appellant did not face a risk of harm in Tunisia as a Christian, and, (iii) that the Appellant had been refused entry to Papua New Guinea to rejoin his wife and children because their customary marriage was not recognised by the authorities of that country.
7. Both parties were agreed therefore that the focus of the appeal was upon the risks the Appellant claimed to face in the event of return to Tunisia, since the Respondent was unable to show that he could be removed to Papua New Guinea where the appellant agreed he faced no risk of harm.
8. The parties were also agreed before me that the Appellant's case before the Judge was that the evidence showed that the general position of Christians within Tunisia had deteriorated significantly since the decision of Judge Levin in 2012. In any event, it was the Appellant's case that Judge Levin had failed to distinguish between the position of those who had always been Christian, and those who had converted to that faith from Islam. The Appellant's case was that apostates faced very serious difficulties, even if those who were born into the Christian faith faced lesser problems.
9. It was not disputed before the Judge that the Appellant was an apostate [43]. Two Catholic priests gave evidence to the Judge that the Appellant was familiar with the rites customs and rituals of the Catholic Church, and that he was a regular attender at worship in their Church. There was evidence from the Appellant to explain some of his behaviour when he was an alcoholic, and his changed behaviour since he had accepted that addiction and sought assistance to deal with it.
10. It was not the Appellant's case before the Judge that he had ever sought to proselytise his faith, or that he had any intention of doing so in the future.
11. The Appellant's case therefore was that he would wish to pursue his faith within a Roman Catholic congregation, in any place that he would live, but that he would feel unable to do so in Tunisia for fear of very serious physical harm if he did, because the state would be unable

to protect him from the attitudes of the general population which would be prevalent across the whole country. He would have no family support from Tunisia because his own family had rejected him as a result of his apostasy, and indeed he would need to avoid them for fear of their reaction to him. (Judge Levin's view was that he would be able to do so, but he accepted that he would need to do so.)

12. Before me it was agreed by both parties that the Judge's approach to the evidence was flawed. Having focused upon an event that was said to have taken place in the UK, in which the Appellant had claimed he had been threatened with violence as an apostate, the Judge found (following her own questioning of the Appellant) that there had been a discrepancy in his account which damaged his general credibility as a witness of fact. She went on to conclude that the Appellant was not being truthful when he said that he would wish to pursue the Christian faith if he were living in Tunisia, and, that she was not satisfied as to the true extent of his Christian faith which she considered to have been exaggerated. That approach led her to go behind the concession that had been made before her by the Respondent to the effect that the Appellant was genuinely an apostate, who had indeed converted to the Roman Catholic Church from Islam. She did not in consequence follow the proper approach to that concession, which is to be found in HJ (Iran) [2010] UKSC

13. Since both parties were agreed that the decision had to be set aside and remade, the focus of the hearing then turned to the mechanism for doing so. I have in these circumstances considered whether or not to remit the appeal to the First Tier Tribunal for it to be reheard, as requested by both parties. In the circumstances of the appeal I am satisfied that this is the correct approach. In circumstances where it would appear that the relevant evidence has not properly been considered by the First Tier Tribunal, the effect of that error of law has been to deprive the Appellant of the opportunity for his case to be properly considered by the First Tier Tribunal; paragraph 7.2(a) of the Practice Statement of 25 September 2012. Moreover the extent of the judicial fact finding exercise is such that having regard to the over-riding objective, it is appropriate that the appeal should be remitted to the First Tier Tribunal; paragraph 7.2(b) of the Practice Statement of 25 September 2012. Having reached that conclusion, with the agreement of the parties I make the following directions;

- i) The decision upon the appeal is set aside. The appeal is remitted to the First Tier Tribunal for rehearing. No findings of fact are preserved. The appeal is not to be listed before Judge Griffiths.
- ii) No interpreter is required for the hearing of the appeal.
- iii) The appeal is to be listed on the first available date at the North Shields hearing centre after 29 August 2016 for directions, and for listing for full hearing. The Appellant must be in a position to inform the Tribunal at that hearing what (if any) further evidence he seeks to rely upon.
- iv) The Anonymity Direction previously made by the First Tier Tribunal is preserved.

Decision

14. The decision promulgated on 15 February 2016 did involve the making of an error of law sufficient to require it to be set aside and the appeal to be reheard. Accordingly the decision upon the appeal is set aside and the appeal is remitted to the First Tier Tribunal with the following directions;
- i) The decision upon the appeal is set aside. The appeal is remitted to the First Tier Tribunal for rehearing. No findings of fact are preserved. The appeal is not to be listed before Judge Griffiths.
 - ii) No interpreter is required for the hearing of the appeal.
 - iii) The appeal is to be listed on the first available date at the North Shields hearing centre after 29 August 2016 for directions, and for listing for full hearing. The Appellant must be in a position to inform the Tribunal at that hearing what (if any) further evidence he seeks to rely upon.
 - iv) The Anonymity Direction previously made by the First Tier Tribunal is preserved.

Deputy Judge of the Upper Tribunal JM Holmes
Dated 22 July 2016