Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09541/2018

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 12 March 2019	**On 15 March 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

MB
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Wood, IAS (Sheffield)
For the Respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born on 20 January 1983 and is a citizen of Morocco. The appellant claims to have arrived in the United Kingdom in January 2018. By a decision dated 1 August 2018, the Secretary of State refused the appellant's application for international protection. The Secretary of State accepted that the appellant is a Moroccan of Amazigh ethnicity but did not accept that he had been arrested by the Moroccan army and detained and tortured for six months before being released without charge but on a weekly reporting condition. The appellant claimed that he had entered the desert with relatives for a picnic and had ventured into an area which the army claimed was prohibited to civilians.

2. The appellant appealed to the First-tier Tribunal which, in a decision promulgated on 14 December 2018 dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

3. The judge accepted the accuracy of most of the appellant's account. He found that the appellant had been arrested by the Moroccan army and mistreated. He accepted that the appellant had entered a prohibited area in this highly sensitive region of the Western Sahara, due been the subject of a dispute between Morocco and the Polisario Front since the 1970s. However, the judge rejected the appellant's claim that the authorities had kept his home in Bouznika under surveillance or that the authorities had gone to his family home recently to look for him. Further, the judge did not accept that there was an arrest warrant out for the appellant. At [36], the judge concluded, 'I am not satisfied that [the appellant] will be at risk of serious harm in the future because I do not accept that the authorities are looking for him or are even still interested in him.'

4. The appellant relies on *Demirkaya* [1999] EWCA Civ 1654 at [20]:

> "20. Tribunal's failure to have regard to previous persecution
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> Mr Nicol submits that the treatment which the appellant received in the months before he escaped from Turkey was life threatening and of a particularly horrifying kind. This is very relevant to the question whether the appellant has a well-founded fear of persecution on his return, yet the Tribunal do not advert to this aspect of the case at all. In MacDonald's Immigration Law and Practice, 4th edition, at paragraph 12.18, the editors state:
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> > "Past persecution substantially supports the well-foundedness of the fear in the absence of a significant change of circumstances."
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> In his book 'The Law of Refugee Status', at p88, Professor Hathaway states:
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> > "Where evidence of past maltreatment exists, however, it is unquestionably an excellent indicator of the fate that may await an applicant upon return to her home. Unless there has been a major change of circumstances within that country that makes prospective persecution unlikely, past experience under a particular regime should be considered probative of future risk...
> >
> > In sum, evidence of individualised past persecution is generally a sufficient, though not a mandatory, means of establishing prospective risk."
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> Although the House of Lords in Adan's case held that historic fear was not sufficient and an applicant for asylum had to show a current well-founded fear, Lord Lloyd of Berwick said at p308C said:
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> > "This is not to say that historic fear may not be relevant. It may well provide evidence to establish present fear.""

The appellant submits that, having found that the appellant had been detained and mistreated for six months and then released on a signing condition which he had breached by leaving the country, the judge should have found that, in the absence of any major/significant change of

circumstances in Morocco, the appellant would be ill-treated on return. Mr Bates, who appeared for the Secretary of State, observed that there were no Home Office policy notes or, indeed, Upper Tribunal country guidance for Morocco. Both representatives told me that it is very rare that the Secretary of State, the First-tier Tribunal or Upper Tribunal have to deal with appeals for citizens of that country.

5. The appellant does not challenge the findings of the judge save by reference to *Demirkaya*. However, the passage from that judgement which I have quoted above sits uneasily with the facts in this case. It makes no sense for the grounds at [7] relying on the Court of Appeal authority to submit that the judge had 'failed to identify any major/significant change of circumstances in Morocco that would lead the authorities to ignore the appellant.' That is the language used in *Demirkaya* where there was a great deal of evidence dealing with the treatment of perceived separatists returning to Turkey. It cannot be said, however, that there has been a major change of circumstances in Morocco as there is no evidence to show what the circumstances were in the first instance. The appellant is not relying on evidence but merely on the assertion that, like regimes in other countries, the Moroccan authorities would seek to harm individuals whom they have previously detained, required to fulfil signing condition and who have fled the country. The fact is that there is no evidence to support such an opinion or, indeed, to contradict or support the judge's own finding that, having punished the appellant for venturing into a prohibited area, the Moroccan authorities have lost interest in him. Ultimately, I am reminded that the burden of proof in the appeal rested on the appellant. Although the judge accepted much of the appellant's account, he was entitled on such evidence as he had to reject the claim that the appellant's family home has been under surveillance or that there is a warrant out for his arrest; in his grounds of appeal, the appellant does not challenge those findings. The appellant has not discharged the burden of proving that, simply because he had been detained in the past, it is reasonably likely that he will be ill-treated on return to Morocco. To establish that claim the appellant had to produce evidence; it was not enough of him to rely on the familiar dictum that past persecution rendered future persecution reasonably likely to occur. In the circumstances, I find no reason to interfere with the First-tier Tribunal's decision.

Notice of Decision

6. This appeal is dismissed.

Signed Date 12 March 2019

Upper Tribunal Judge Lane