



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004128

First-tier Tribunal Nos:
PA/51197/2023
LP/00886/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 18th of January 2024**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

**H Z
(ANONYMITY ORDER MADE)**

Appellant

v

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

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

Heard at Manchester Civil Justice Centre on 7 December 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant is a national of Morocco, born in February 2001. He left Morocco on 20 June 2017, at which point he was 16 years of age and travelled through a number of the countries in Europe and Turkey prior to arriving in the UK in September 2019 and making an asylum claim. The basis of the Appellant's claim, as initially put in his screening interview, is that he was a convert to Christianity, as a consequence of which he had been stabbed in the stomach by his father and his mother had assisted him to flee from the country and he feared persecution for this reason if returned.
2. Prior to his asylum interview, the Appellant changed his account to one where he feared honour killing based on a sexual relationship with a woman. This application was refused on 24 January 2023 and the Appellant appealed against this decision.
3. The appeal came before Judge of the First-tier Tribunal C R Cole for hearing at Manchester on 31 July 2023. There was no appearance on behalf of the Appellant or the Respondent at this appeal but the Appellant attended in person. The judge proceeded to determine the appeal based on the evidence before him, which does not appear to have been very substantial and, in essence, comprised some screenshots from the Appellant which he had translated from Arabic into English, which stated that murder is the punishment for the apostate and that chapter 222 of the Moroccan Criminal Code provides for the punishment of Muslims who openly break their fast during Ramadan. This states that:

"Anyone who is known to have converted to Islam, and openly breaks the fast during the day in Ramadan, in a public place, without a legitimate excuse, to be punished with imprisonment from one to six months and fined from 12 to 120 dirhams".
4. The judge went on to dismiss the Appellant's appeal. He noted at [24] that the Appellant had a large tattoo on his forearm and hand, which was of a lion with a crown on it and it was acknowledged that this was a significant image in Christian symbolism. However, at [30] he found that the Appellant's credibility had been undermined by his willingness to lie in the Asylum Interview Record for reasons that he did not find to be plausible or justifiable. The judge went on to find at [31] that although he did not accept that it was reasonably likely that the Appellant is a genuine convert to Christianity, he was willing to accept that the Appellant has some interest in Christianity, has been shown comfort and support by various Christian churches and he accepted that the Appellant has appreciated this, which has led him to gravitate towards Christian communities as he feels they are more welcoming than the strict Islamic tradition in which he grew up.
5. The judge accepted at [32] the existence of the tattoo, that it was reasonably likely the Appellant had this tattoo in Morocco and also it was reasonably likely that it could cause offence in a strict Muslim family. The judge went on to find at [33] and [34] that it was not reasonably likely the Appellant was stabbed by his father. There was no medical evidence regarding the stab wound and whilst it was possible the scar was caused by virtue of a stabbing it could also have been caused by other means, e.g. a gall bladder operation and that further specific medical evidence would be required in order to make an assessment as to which causes would even be likely to be true. The judge further noted that, even if the scar was caused by a stab wound, it does not prove it was his father who the perpetrator of the stabbing.

6. Consequently the judge went on to find that although there was evidence of discrimination and societal harassment of those from religious minorities, including Christian converts, the Appellant was not at present a genuine Christian convert and any societal issue he may face on return would not amount to persecution; that the Appellant may cause some offence, he may be on the receiving end of discrimination and verbal harassment but he would not be at real risk of serious harm [36] and that he could internally relocate from his home area [37].
7. The Appellant sought permission to appeal against this decision and drafted his own grounds of appeal, essentially reiterating that he would be at risk on return to Morocco. Permission to appeal was granted by First-tier Tribunal Adio in *inter alia* the following terms:

“3. It is arguable that the judge erred in not considering whether the Applicant would be perceived as a Christian regardless of the judge’s finding that the Appellant is not a genuine Christian convert. In the grounds supporting the application for permission to appeal, the Applicant stated that since he is a Christian, he cannot fast Ramadan and in Morocco if you do not fast Ramadan there is a prison sentence of six months in prison and he does not want to go to prison.

4. In view of the fact that the Applicant has taken a stand that he is no longer a Muslim coupled with the judge’s finding that he is gravitating towards Christian communities and has some interest in Christianity it is arguable that the Appellant would not want to fast Ramadan. This becomes a material issue which has not been considered within the country background material. It is arguable that not fasting Ramdhan and facing possible imprisonment has not been considered within the background evidence.

5. In view of the judge’s findings at paragraph 37 it is also arguable that without the support of his family as indicated at paragraph 36 it would be unduly harsh in the Applicant relocating to another part of Morocco. Permission to appeal is granted.”

Hearing

8. At the hearing before the Upper Tribunal, the Appellant attended and was assisted by an Arabic interpreter. Given that the Appellant remained unrepresented, I asked Mr Tan to make his submissions first and then the Appellant would have the opportunity to respond to them. Mr Tan submitted that the grant of permission has interpreted the grounds which were drafted by the Appellant himself and that focused on the risks to him due to his tattoo. Mr Tan noted that the Appellant’s historical account had not been accepted and those findings had not been challenged in the grant of permission: see [20], [31] and [33]. Therefore all that was left was the existence of the tattoo and a vague interest in Christianity.
9. Mr Tan submitted that the evidence before the judge was very thin and seemed to be sections from Google, which had been translated. He submitted that the existence of legislation for crimes does not equate to how this would work in practice, and there was no evidence about the operation of the penal code in Morocco; that the judge at [35] set out the situation in Morocco and it was hard to see what else he could have done on the basis of the evidence that was before

him. Mr Tan submitted there was an absence of evidence of state persecution and to find to the contrary would have been wholly unsound. The burden of proof rested upon the Appellant to show a risk of persecution and there was an absence of evidence that demonstrates that there was no material error in relation to the risk assessment. Mr Tan, in response to a question from the Upper Tribunal, clarified that the Respondent's position, in light of the judge's findings was that, at best, the Appellant would be subjected to discrimination rather than persecution.

10. Again, in response to a question from the Upper Tribunal, Mr Tan was unable to confirm whether there was any further evidence before the judge i.e. in terms of a Home Office CPIN or human rights reports in relation to the judge's findings at [35] and [36] of the decision, given there was no representative from the Home Office present at the hearing before the First tier Tribunal. Mr Tan acknowledged that arguably it could be an error if the judge looked at documents, but he was trying to do his best.
11. I then summarised the points made by Mr Tan for the Appellant, which were translated by the Arabic interpreter and he was given the opportunity to respond. The Appellant reiterated that he would be at risk of imprisonment if he failed to fast during Ramadan and ate in front of Muslims, that he has submitted the screenshots and had translated them from Arabic to English and that he had been stabbed in his stomach and had provided some photographs. The Appellant stated that the judge had made a mistake because he did not look at the law in Morocco and that he had a problem with his family because he changed his religion. He also confirmed that he had not had access to any legal advice or representation since he came to the UK because he lacked the means to do so, as a consequence of which he was advised of his eligibility for legal aid. The Appellant stated he had an appointment with a priest in the church to baptise him and that he needed justice. I reserved my decision, which I now give with my reasons.

Decision and reasons

12. I have concluded that there are no material errors of law in the decision and reasons for the First tier Tribunal Judge. Whilst permission to appeal to the Upper Tribunal was granted on the basis that: "*3. It is arguable that the judge erred in not considering whether the Applicant would be perceived as a Christian regardless of the judge's finding that the Appellant is not a genuine Christian convert*" there was no evidence before the judge that the Appellant would be subjected to persecution in Morocco if he were perceived to be a Christian.
13. Due to the fact that the Appellant gave a different reason for claiming asylum at his substantive asylum interview, the Respondent did not give detailed consideration to the extant basis of claim nor consider any background evidence. The Appellant has not been in receipt of any legal advice or representation which may have resulted in the submission of human rights reports and so there was no background country evidence at all that could have assisted the judge.
14. Consequently, even if on return to Morocco the Appellant did not fast during Ramadan, the only evidence before the judge was a bare statement of the law, as set out at section 222 of the Moroccan Penal code, which provides that breaking the fast in public may be punishable by up to 6 months imprisonment. There was no evidence that demonstrated a reasonable degree of likelihood that this would result in adverse consequences for the Appellant due to the law being

implemented in practice, or to demonstrate that offenders were prosecuted and imprisoned or any evidence as to how offenders would be treated if convicted and imprisoned.

15. As Mr Tan submitted, the judge did consider risk on return at [35]:

“35. Morocco is an Islamic country with a majority Muslim population. I note that there is evidence of discrimination and societal harassment of those from religious minorities, including Christian converts. However, the Appellant is not at present a genuine Christian convert and any societal issues he may face on return will not amount to persecution.”

16. In the absence of any evidence to controvert the judge’s material findings, I find no material errors of law and the decision of the First tier Tribunal judge is consequently upheld.
17. The Appellant informed me that he was due to be baptised. In the event that he undertakes a formal conversion to Christianity and fears return to Morocco for this reason, he may wish to seek legal advice under the auspices of legal aid and could make representations in support of a fresh asylum claim on this basis in that event.

Notice of Decision

18. The decision of the First tier Tribunal judge is not vitiated by error of law and is upheld.

Rebecca Chapman

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

14 January 2024