



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06160/2019

THE IMMIGRATION ACTS

Heard at Field House on
12 November 2020

Decision & Reasons Promulgated
On 2 February 2021

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

B O
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity

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

Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. I find that it is appropriate to continue the order. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the appellant and to the respondent.

Representation:

For the appellant:

Mr B. Hawkin, instructed by Wimbledon Solicitors

For the respondent:

Ms S. Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 11 June 2019 to refuse a protection and human rights claim.
2. First-tier Tribunal Judge Wylie ("the judge") dismissed the appeal in a decision promulgated on 04 December 2019. The judge accepted the appellant's account of past events but concluded that she would not be at risk on return to Tunisia because the authorities could provide sufficient protection from her persecutor.
3. The Upper Tribunal reviewed the case following the start of the Covid-19 pandemic. Case management directions were sent on 20 April 2020. The directions included a provisional indication, subject to further submissions, that the First-tier Tribunal decision involved the making of an error on a point of law. The directions said that the Upper Tribunal was of the preliminary view that the error of law decision could be decided without a hearing with reference to rule 34 of The Tribunal Procedure (Upper Tribunal) Rules 2008 ("the Procedure Rules"). Provision was made for the parties to object to the proposed course of action.
4. In a response to the directions sent on 07 May 2020 the respondent accepted that the First-tier Tribunal decision involved the making of an error of law. Although the appellant's representatives sent a response to the directions on 11 May 2020 (outside the timeframe for a response given in the directions) the court administration did not have time to forward it to the judge by the time the error of law decision was made on 14 May 2020. In any event, the appellant did not object to the decision being made without a hearing. The Upper Tribunal considered the overriding objective of the Procedure Rules and took the view that there would be no unfairness to the appellant in proceeding to determine the appeal without submissions (as it was thought) because the appeal would be decided in her favour.
5. The Upper Tribunal set aside those parts of the First-tier Tribunal decision relating to sufficiency of protection and internal relocation in a decision promulgated on 15 May 2020 (annexed). In view of the fact that the credibility of the appellant's account of past events had been accepted, the narrow issue for remaking was likely to focus on the background evidence relating to the circumstances in Tunisia. Taking into account the continued need to prevent the spread of Covid-19 the Upper Tribunal indicated that its preliminary view was that remaking could be done without a hearing by way of written submissions. Again, the directions made provision for the parties to object to the suggested course of action. The appellant's representatives requested a hearing in correspondence dated 05 June 2020. The case was listed for a face to face hearing because the appellant required the assistance of an interpreter.
6. The error of law decision summarised the preserved findings as follows:

"7. ...The judge heard evidence from the appellant. She accepted the appellant's account of repeated rape and sexual assault by her persecutor [58]. She also appeared to accept that he comes from a family that has "amassed fortunes from distributing and selling medical machines and implants, taking excessive money from state institutions, and obtaining other contracts from contractors and major commercial institutions, and also owning a radio station." [63]. The judge also accepted that the background evidence showed that there is corruption in Tunisia and that her persecutor's family "have been engaged in such practices which have [accrued] them substantial wealth" [72]. Those findings of fact are preserved."

7. The issues for remaking were outlined in the error of law decision as follows:

- "(i) Whether there is a real risk that the appellant's persecutor might, within a reasonably foreseeable time, discover her whereabouts if she returned to Tunisia;
- (ii) Whether the appellant would be afforded sufficient protection by the authorities in light of the evidence relating to the particular characteristics of her persecutor and the background evidence relating to the level of protection afforded to women who fear sexual violence in Tunisia."

8. Appropriate social distancing measures were in place during the hearing. I kept in mind that the appellant is a vulnerable witness although no special measures were needed for her to give evidence. The court requested a North African Arabic speaking interpreter, but the interpreter who attended the hearing did not appear to speak the same dialect as the appellant. The appellant was able to communicate with her in a mixture of French and local dialect. She also gave some of her answers in English. The appellant's representative had an interpreter at the hearing. I discussed with the representatives whether it was satisfactory to continue with the hearing. Although there were some instances when her evidence needed to be clarified, and the situation was not ideal, overall, I was satisfied that the appellant was able to understand the questions put to her and could communicate her evidence. Mr Hawkin agreed. The matter was kept under review during the course of the hearing, but it was not deemed necessary to adjourn to another day in order to resume with a different interpreter.

9. The details of the evidence and the submissions made by the parties are a matter of record. I will refer to the evidence and submissions where relevant in my findings.

Decision and reasons

10. The appellant is a 31-year-old woman from Tunisia. Her father passed away in or around 2001. She lived in Tunis with her mother and younger brother who, according to patriarchal cultural norms, was the head of the household. She says that her family are conservative Muslims. The appellant's sister lives in Canada with her husband and children. The appellant completed the Baccalaureate. She worked as an administrative assistant in a law firm for a few months after her father passed away. Then she worked as a company receptionist for three years until around 2005. It is unclear whether she worked in a different capacity after that or was dependent upon her brother.

11. At the screening interview the appellant said that she did not want to return to Tunisia because there “are no human rights, especially for women”. She feared the government because she was detained for 8 hours when she attended a demonstration in 2015. She also feared a man “who abused and insulted” her.
12. The appellant’s account of past events is accepted. In order to maintain her anonymity, I will refer to her persecutor as ‘A’, his father as ‘B’, and his brother as ‘C’. In summary, the appellant met A through a girlfriend on a night out in a hotel near Tunis. They went to his villa, where her friend abandoned her. A raped and threatened her. Under continued threat she was forced into a coercive and abusive relationship with him over a period of six years. On one occasion, when she said that she wanted it to stop, he got out a pistol and threatened to kill her. She felt unable to tell her family what had happened because she feared that her brother would reject her or kill her. At one point she ran away to stay with an aunt in Sfax, a small town about 270 km away from Tunis. She did not ask the police for help because she was frightened that her family would find out what had happened. She did not think that the police would do anything to protect her.
13. Alison Pargeter has prepared an expert report. She is a Senior Research Associate at the Royal United Services Institute and a visiting Senior Research Fellow at the Institute of Middle East Studies at King’s College. Previous academic work includes a study on radicalisation in North Africa, which included Tunisia as a case study. She has conducted field work in Tunisia on numerous occasions, before and after the 2011 revolution, and says that she has a broad network of contacts in the country. Although her academic work appears to focus on the rise of political Islam in the Middle East and North Africa, and not on gender related issues, I am satisfied that Ms Pargeter is an experienced researcher who is likely to have a broad knowledge of Tunisian affairs and the contacts required to research relevant issues. Where she refers to evidence it is referenced clearly and is consistent with other background evidence. The report appears to be well balanced. She states when she cannot comment on an issue and departs from aspects of the appellant’s case if necessary. She confirms that she is aware of her duty to the court as an expert witness. I am satisfied that Ms Pargeter has relevant expertise and that I can place weight on her opinion.
14. What Ms Pargeter says about the treatment of women in Tunisia is consistent with the background evidence. She says that although Tunisia is seen as a country which is more progressive regarding women’s rights, Tunisian society remains largely traditional and patriarchal. Women are expected to abide by conservative social norms. Tunisian women, and in particular educated women, are active in the labour force and have more freedom than their counterparts in neighbouring countries. The authorities have made significant efforts to progress women’s rights in recent years through the introduction of the Law on Eliminating Violence against Women.
15. However, despite the efforts of the authorities large parts of Tunisian society remain traditional and cling to conservative social codes. On the whole, women are still

expected to conform to social norms, especially where sex and marriage are concerned. Violence against women is still 'highly prevalent'. A report by Tunisia's National Office of Family and Population in May 2018 found that 53.5% of women had been subjected to physical, sexual or psychological violence either inside the family home or in public. In 2015, Amnesty International reported that there is likely to be a significant underreporting of violence against women. Obstacles to reporting included discriminatory police attitudes, fear of prosecution under laws criminalising indecent behaviour, evidentiary challenges, lack of access to support services, including counselling, women's shelters and legal advice, economic barriers, social stigmatisation and distrust in the criminal justice system. There were reports that victims of domestic abuse were often not taken seriously by the police. There were also some reports of abuse by police officers themselves.

16. In 2017 the government introduced legislation aimed at eliminating violence against women. The law was particularly far-reaching and prohibits physical, economic and psychological abuse against women as well as outlawing harassment in public. The law also closed a loophole which allowed rapists to avoid conviction by marrying their victims and made provision for police to be imprisoned if they failed to file a complaint. Ms Pargeter says that the law was hailed as a mark of progress but there are still many problems with implementation. An article in Time Magazine from July 2018 reported that significant investment is needed for the law to be translated into improved safety for women. The legislation did not say how the projects would be funded and the 2018 budget did not account for it. At the end of November 2018 a conference including government officials, NGOs and survivors of domestic violence assessed how the law is being implemented but reported a 'host of shortcomings, from logistical barriers that prevent some women from filing complaints to social pressures that keep others from even trying'. Amnesty International reported that many women did not report abuse because they fear that their family might react violently or reject them. Ms Pargeter concludes that despite this legislative progress violence against women is still commonplace in Tunisia and there have been serious problems in getting the police to take women who report complaints seriously. This is one of the key factors that hinders many women from going to the police when they have been raped or sexually assaulted.
17. The Amnesty International report for 2019 reported that the Minister of Women, Family, Children and Seniors announced that the Justice Ministry had received around 40,000 complaints from women who had experienced domestic violence during the first seven months of the year. However, the government failed to establish a national observatory to prevent violence against women as required by Article 40 of the Law on Eliminating Violence against Women. The US State Department Report for 2019 noted that the law provided penalties for violence against women 'but enforcement was rare'. Domestic violence remained a serious problem. Rape remained a taboo subject. Cultural pressures often dissuaded victims from reporting sexual assault. Victims received services at two dozen social centres throughout the country in addition to five centres dedicated to victims of gender-based violence. The law prohibits gender discrimination. The government generally

enforced these prohibitions but women faced societal rather than statutory barriers to their economic and political participation.

18. The Freedom House report for 2020 states that corruption is endemic in Tunisia. Corrupt high level officials often act with impunity. In 2018 the government introduced a new law designed to strengthen the anticorruption legal framework. While several independent bodies have been approved to deal with corruption since 2011, many have not yet been established and those that have often lack sufficient resources to carry out their mandate effectively. The campaign has been criticised for concentrating largely on emerging elites while leaving corrupt figures associated with the Ben Ali regime largely untouched. In October 2019 Tunisia was removed from the Financial Action Task Force's blacklist of noncooperative countries, which may indicate that anticorruption initiatives are beginning to result in positive change.
19. The Freedom House report goes on to state that Tunisia has been praised for relatively progressive social policies, especially in the area of family law and women's rights. However, women continued to experience high rates of domestic abuse. There has been criticism of the law because it allows accusers to drop charges leaving women who are vulnerable to domestic abuse susceptible to pressure from their abusers and others to withdraw allegations. The 2018 conference mentioned above noted that implementation of the law has been limited by a shortage of trained agents to handle complaints, pressure on women from some agents to avoid taking their abusive husbands to court, and a number of logistical barriers to reporting abuse.
20. I will not set out the details of the articles which refer to her persecutor's family in order to preserve anonymity. The parties are aware of the evidence before the Upper Tribunal. The evidence shows that B was an influential physician with a military rank who was close to the previous regime of President Habib Bourguiba and then his successor President Ben Ali. The evidence indicates that the family profited from their position and were likely to continue to have influence after President Ben Ali fell from power in 2011 because of their wealth albeit close political connections to those in power may have dwindled. Family members are reported to have had a monopoly on the import of certain medicines. C owned a media outlet. The family appears to have links with the military and are influential in the health sector.
21. Ms Pargeter's research is consistent with the other evidence relating to the influence of A and his family. She confirms that A's family is well known. B was an important figure in the former regime. C is a well-known personality in Tunisia with a public profile. Some people suggested that he was only granted a licence to set up a media outlet because of his position as the son of B. A is an influential businessman who imports medical equipment for public hospitals and private clinics. He was able to amass a fortune, in all likelihood, because of his father's links with the previous regime. She noted that another article suggested that the family owns large swathes of land in Tunisia. Although there was some suggestion that the state might have taken steps to reclaim land from certain individuals who had exploited local

agricultural development societies (the article mentioned the sons of B) Ms Pargeter could not find any more information on whether the land owned by A's family was retroceded by the state. Ms Pargeter concluded that A appeared to be a wealthy individual who, although he did not have the same public profile as B and C, was part of a well-known family that had 'extremely powerful connections' prior to the 2011 revolution.

22. Although the appellant says that she had seen A travel in an official car, the evidence suggests that his family is unlikely to have had any official links to the Tunisian state since President Ben Ali was overthrown in 2011. Ms Pargeter explains that many of those who were linked to the former regime have lost much of their power and sway. She could find nothing in the public domain to suggest that A or his family form part of the new regime. Someone with considerable wealth could still have contacts within the current political establishment, but that would not give him *carte blanche* to act with impunity. For these reasons, Ms Pargeter considered that A was likely to be a non-state actor.
23. Ms Pargeter was unable to comment on the authenticity of the summons from the General Administration Research Department of the Customs Unit of the Finance Ministry because she was not familiar with such documents. She was also unable to comment on whether it was likely that A could have instigated the summons. In order to do so he would need to have connections in the relevant department. At best the appellant speculates that it might have had something to do with A but there is no evidence to support this assertion.
24. Ms Pargeter went on to consider whether there was a potential risk from the appellant's family if they discovered her history. She said that the appellant's fears were understandable given societal views about women who have been raped or sexually abused. Her family's response may depend on whether they have traditional views. However, it is likely that they would react negatively and would view her history as a source of shame and dishonour. To that extent she might be at risk but the risk was unlikely to extend to 'honour' killing, which is rare in Tunisia. Nevertheless, the appellant could find herself 'shunned and excluded' from the family home and may be at risk of verbal or physical abuse from family members.
25. In Ms Pargeter's opinion, the appellant might be able to relocate to another part of Tunisia but was likely to face 'significant challenges' in doing so, especially if she did not have family support. Although some women live alone, especially in big cities, living as a single woman can be problematic. It is still unusual for an unmarried woman not to live with her family. Single women tend to be more vulnerable to sexual harassment and abuse given that they have no male relative to protect them and are viewed by some men as 'fair game'. The appellant could find herself subject to social stigma and sexual harassment. Given the high rates of unemployment, she may struggle to find work to support herself if her family refuses to assist her.

26. An up to date psychiatric report has been prepared by Dr Ali Isa Alfaraj, a consultant psychiatrist who works in the private sector. He has been a psychiatrist since 1996 and a consultant since 2010. He was satisfied that he could assess the appellant's mental health adequately by video call where he could examine and assess her facial expressions, her reactions and interaction with him. Dr Alfaraj outlined the personal history taken from the appellant and her psychiatric history drawn from her medical records. He noted that the appellant was diagnosed with a depressive episode in 2018. She also scored high for depression and anxiety on a Patient Health questionnaire. Dr Alfaraj summarised his clinical observations. Although his conclusions do not make specific reference to relevant diagnostic criteria, I am satisfied that as a consultant psychiatrist Dr Alfaraj is qualified to assess the appellant's psychiatric state. Dr Alfaraj concluded that the appellant was likely to suffer from a combination of Post-Traumatic Stress Disorder (PTSD), which was likely to be closely linked to her past experiences, and Mixed Anxiety and Depressive Disorder. He explained why the appellant's symptoms and presentation supported this conclusion. He recommended that the appellant should continue with the therapeutic work already been offered to her and that her GP should increase the anti-depressant medication she currently receives. In his opinion, it is 'highly likely' that her mental state would deteriorate if she were to be forced to return to Tunisia. She would be vulnerable to similar abuse and was unlikely to report further abuse due to fear and shame. She reported that her brother had assaulted her in the past. She was too frightened to tell him what had happened to her. Ms Pargeter says that the appellant might also suffer social stigma as a result of her mental health problems. Mental health care is woefully inadequate in Tunisia.
27. I turn to consider how these facts fit within the relevant legal framework. It is trite law that the threshold for persecution may depend on the individual characteristics of the person concerned. First-tier Tribunal Judge Wylie accepted the appellant's account of past events. Acts of persecution must be sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights. The ill-treatment the appellant describes involved rape, sexual assault, exploitation and threats to kill and were sufficiently serious by the nature and repetition to amount to persecution.
28. The evidence shows that despite positive developments in the legal framework to eliminate violence against women in Tunisia, in practice, violence against women remains widespread and there are practical obstacles to effective implementation of the law on the ground. Those obstacles include continuing widespread discriminatory social attitudes about the role of women in Tunisian society, which extend to members of the authorities. Those widespread attitudes act as a barrier to disclosing abuse to family members, police and other agencies. Implementation of the law on the elimination of violence against women is hampered on the ground by failure to give effect to some provisions, lack of funding, and logistical barriers to reporting abuse. Although Tunisia is said to be more progressive in its attitudes than other countries in the region, the evidence indicates that a large part of Tunisian society still holds traditional patriarchal views about the role of women. Those views

contribute towards the vulnerability of women to sexual and other violence, which remains widespread.

29. The appellant's account is consistent with the background and other evidence. As an unmarried woman she was vulnerable to exploitation by a man from a wealthy and influential family. It is clear that he saw her as 'fair game' as described by Ms Pargeter. Negative societal attitudes contributed towards the appellant's fear and shame. She felt unable to disclose the abuse to her brother who holds conservative views. She felt unable to approach the authorities because she did not want her brother to know. She feared being rejected and ostracised by her family if they found out what had happened. Although Ms Pargeter's opinion is that there is a low risk of 'honour' killing, it is at least possible that she might be at risk of physical abuse from family members if the history of abuse is perceived to bring 'dishonour' to the family.
30. The background evidence also shows that discriminatory societal attitudes extend to members of the authorities such as the police, who often do not take complaints seriously. In addition to these factors that might act as obstacles to effective protection, the appellant's persecutor is a wealthy individual who may be protected to some extent by his family's influence. Although there is some evidence to suggest that anticorruption measures are beginning to bear fruit, Tunisia is still described as a country where corruption is endemic. Even if the appellant approached the authorities for assistance and was willing to take the risk of being ostracised from her family, her persecutor is in a position to bribe and influence the police, which is likely to render protection ineffective.
31. A central question is whether A is likely to discover the appellant's whereabouts if she returned to Tunisia. The fact that the appellant has already been subject to persecution or serious harm is a serious indication of a well-founded fear of current persecution in the absence of good reasons to consider that such persecution or serious harm will not be repeated. The evidence indicates that despite the change in regime A and his family continue to retain an influential position in Tunisian society as a result of their wealth even if their direct political influence might have waned.
32. The appellant appears to come from an educated middle class family in Tunis. Her social circle brought her into contact with A in the first place. Tunisia is not a large country. If the appellant were to return to her family home in Tunis, it is at least reasonably likely that A would find out through the local community. In such circumstances she would face the same risk as before. She could not approach the authorities for fear of disclosing the abuse to her brother thereby risking ostracism. Even if she did approach the authorities widespread discriminatory attitudes relating to women indicate that any complaint may not be taken seriously because the legal framework still faces significant obstacles to implementation in practice. Even if a complaint was registered, the evidence of widespread corruption indicates that her wealthy persecutor may be able to negate any protection that might be available.

33. The appellant says that she has had no contact with her brother since she left Tunisia. If she lived away from her family she would face numerous obstacles as a lone unmarried woman. As a former victim of sexual abuse she is vulnerable to further abuse. The background evidence indicates that a lone woman is likely to be vulnerable to harassment and abuse by men who see women who live alone as 'fair game'. The fact that the appellant is suffering from PTSD and depression as a result of her past experiences only increases her vulnerability. Although she has been able to find work in the past she was living with her family at the time. Even if she was able to find work to support herself it would not be reasonable or would be unduly harsh to expect her to isolate herself from any remaining friends or family that she might need to turn to for support in order to ameliorate the risk of A identifying her whereabouts.
34. Although it is not possible to predict with any certainty whether A would find out that the appellant had returned to Tunisia, or whether he would continue to exploit and threaten her in the same way as before, the appellant does not have to prove her case with any certainty. In my assessment it is at least reasonably likely that if the appellant returned to Tunisia and sought to re-establish herself there with the assistance of any remaining friends or family, that A is sufficiently influential to find out through their social circles and the local community that she has returned. His past persecution involved many years of exploitation and abuse. When she told him she did not want it to continue he threatened her with a gun. Nothing in this pattern of behaviour indicates that he is no longer likely to have an interest in her. If nothing else, he may have an interest in continuing to intimidate and threaten her as a means of preventing her from reporting his past abuse to the authorities.
35. Given the size of Tunisia and the influence that A's family has, it would not be reasonable to expect the appellant to relocate to another area outside Tunis. Smaller towns and villages are likely to hold even more traditional attitudes. The evidence indicates that a lone woman is likely to be vulnerable to abuse by other men, may be viewed with suspicion, and may find it more difficult to find work to support herself. Again, it would be unduly harsh to expect the appellant to have to divorce herself from contact with any remaining social support that she may have in Tunisia for fear of A discovering her whereabouts.
36. The fact that the appellant was subject to past persecution is an indicator of the risk of future persecution. The appellant only needs to prove her case to the low standard of proof. I am satisfied that the evidence relating to the influential position that A and his family hold in Tunisia is sufficient to give rise to a well-founded fear of continued persecution if she returned and/or that her particular profile means that she would be vulnerable to similar ill-treatment by other men.
37. I turn to consider whether there is a causal link between the treatment that the appellant is likely to suffer and one of the five Convention reasons. At the date of the hearing Article 10(1)(d) of the Qualification Directive still applied. In any event, there is no material difference between the Qualification Directive and well established

principles of refugee law. Article 10(1)(d) states that a group shall be considered to form a 'particular social group' if members of the group share an innate or unchangeable characteristic, a common background that cannot be changed or a shared characteristic or belief that is so fundamental to a person's identity that the person should not be forced to renounce it. In addition, the group must have a distinct identity in the relevant country, because it is perceived as being different by the surrounding society.

38. The House of Lords in *Islam v SSHD and R (ex parte Shah)* [1999] INLR 144 made clear that the concept of discrimination in matters affecting fundamental rights and freedoms is central to a proper understanding of the Refugee Convention. The court found that a particular social group did not need to be cohesive nor its members interdependent. It is distinguished by an immutable characteristic and should not be defined by reference to shared persecution. Lord Hope made the following findings relating to 'women' as a social group in Pakistan:

"The unchallenged evidence in this case shows that women are discriminated against in Pakistan. I think that the nature and scale of the discrimination is such that it can properly be said the women in Pakistan are discriminated against by the society in which they live. The reason why the appellants fear persecution is not just because they are women. It is because they are women in a society which discriminates against women. In the context of that society I would regard women as a particular social group within the meaning of article 1A(2) of the Convention."

39. In comparison to other countries in the region Tunisia is viewed as having made progress in relation to women's rights and protection under the law. Despite these positive developments the evidence continues to show that discriminatory views about the role of women are widespread in Tunisian society. Although the government had taken positive steps to improve the legal framework in an attempt to eliminate violence against women, on the ground, implementation is weak due to a range of obstacles including discriminatory police attitudes, lack of implementation of some legal requirements, lack of funding and resources, and widespread social attitudes that act as disincentives for women to report abuse. Despite some progress, violence against women remains 'highly prevalent'.
40. When placed in the context of the evidence relating to Tunisia the appellant was vulnerable to abuse and exploitation by A because she comes from a society that discriminates against women. She was seen as 'fair game' by a man who holds discriminatory attitudes about women. She was unable to report the abuse to her brother for fear of physical punishment or ostracism because this would not conform with traditional attitudes about family 'honour'. She felt unable to approach the authorities because many members of those authorities would not take the complaint seriously because they hold similar discriminatory attitudes. It is obvious that 'women' are a particular social group. I am satisfied that the evidence shows that the additional element of discrimination, which is at the heart of the Refugee Convention, is shown in light of the evidence relating to the treatment of women in Tunisia.

41. For the reasons given above I find that there is a reasonable degree of likelihood that the appellant has a well-founded fear of persecution for reasons of her membership of a particular social group if returned to Tunisia. For the same reasons the appellant is at risk of Article 3 ill-treatment.
42. Although remaking was confined to the protection claim Mr Hawkin sought to make a late submission in relation to an Article 3 medical claim. Whilst the appellant's medical condition contributes to her vulnerability and risk on return to Tunisia, the nature and extent of her condition falls far short of the high threshold required to make out a medical claim under Article 3.
43. I conclude that removal of the appellant from the United Kingdom would breach the United Kingdom's obligations under the Refugee Convention and would be unlawful under section 6 of the Human Rights Act 1998.

DECISION

The appeal is ALLOWED on Refugee Convention and human rights grounds

Signed *M. Canavan* Date 21 January 2021
Upper Tribunal Judge Canavan

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email

[ANNEX]



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(Immigration and Asylum Chamber)

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DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 11 June 2019 to refuse a protection and human rights claim.
2. First-tier Tribunal Judge Wylie ("the judge") dismissed the appeal in a decision promulgated on 04 December 2019. The judge accepted the appellant's account of past events but concluded that she would not be at risk on return to Tunisia because the authorities could provide sufficient protection from her persecutor.
3. Upper Tribunal Judge O'Callaghan granted permission to appeal in an order dated 26 February 2020 in the following terms:

"1. It is arguable that the Judge has failed to provide adequate reasons for determining that the appellant's assailant is a non-state actor. The failure of the author of a document to refer to whether the assailant has access to a government care is not determinative of the issue and it is arguable that this is the sole ground for rejecting the applicant's evidence on this issues: [60]-[61] of the decision."

4. The appeal was due to be heard by the Upper Tribunal on 22 April 2020. The hearing was vacated due to the circumstances surrounding the Covid-19 pandemic. The Upper Tribunal reviewed the case and sent further directions to the parties on 20 April 2020. The Upper Tribunal encouraged the parties to discuss the case to see whether there was any agreement as to whether the First-tier Tribunal decision involved the making of an error on a point of law such that all or part of the decision needed to be set aside. Subject to further submissions, I gave the following indication regarding the merits of the appeal.

"In particular, the parties may wish to note my preliminary indication of the merits of the appeal (subject of course to further submissions). The First-tier Tribunal judge may have failed to adequately engage with the background evidence relating to (i) the level of influence that her persecutor and his family appear to hold; (ii) in combination with the evidence relating to corruption in Tunisia; and (iii) the evidence relating to societal discrimination against women. The combination of these factors was relevant to the assessment of whether there is a serious possibility that her persecutor could influence the authorities to the extent that she might not be afforded sufficient protection from further serious sexual abuse. Subject to further submissions, my initial assessment is that the First-tier Tribunal's findings relating to sufficiency of protection failed to take into account relevant considerations and were inadequate."

5. Although the directions were sent to the appellant, her solicitor, and to counsel, at the date this decision is made, I have not received a response on behalf of the appellant. The respondent complied with the directions on 07 May 2020 in the following terms:

- "(1) Further to the directions issued by Upper Tribunal Judge Canavan, the respondent agrees that there appears to be a material error in law in the FTTJ's treatment of the evidence, as highlighted by UTJ Canavan at [her] paragraph 2) i).
- (2) The respondent is of the opinion the matter is best set aside, and returned to the FTT. It is observed that very little in the way of credibility findings, either way, are recorded by the FTTJ."

6. Neither the appellant nor her representatives appear to have complied with the directions made by the Upper Tribunal. However, the effect of the concession made by the Secretary of State is that, despite the appellant's failure to respond to the directions, I can find that the First-tier Tribunal decision involved the making of errors of law for the reasons I indicated in the directions sent on 20 April 2020. In the absence of any engagement by the appellant, I need to consider the appropriate forum and method for remaking the decision.
7. I bear in mind that remaking in the Upper Tribunal is the usual course of action even if some further fact finding needs to be done. In this case, I do not agree that the First-tier Tribunal judge failed to make enough findings of fact such that the appeal must be heard afresh in the First-tier Tribunal. The judge heard evidence from the appellant. She accepted the appellant's account of repeated rape and sexual assault by her persecutor [58]. She also appeared to accept that he comes from a family that has "amassed fortunes from distributing and selling medical machines and implants, taking excessive money from state institutions, and obtaining other contracts from contractors and major commercial institutions, and also owning a radio station." [63]. The judge also accepted that the background evidence showed that there is corruption in Tunisia and that her persecutor's family "have been engaged in such practices which have [accrued] them substantial wealth" [72]. Those findings of fact are preserved.
8. The crux of the appeal to the Upper Tribunal was whether the judge erred in going on to dismiss the appeal on the ground that the evidence did not show that her persecutor had sufficient influence "to be informed of the arrival of the appellant to the country, or to obtain telephone registration details" [72]. In doing so she failed to analyse whether the appellant's persecutor might, in time, find out where she was living given the history of past events. The judge went on to conclude that, even if he did find her, sufficient protection was available. However, she failed to take into account her earlier finding that the appellant's persecutor was likely to have used corruption to influence the authorities in the past [73]. I conclude that the aspects of the decision that require remaking are narrower than the respondent suggests and are confined to the following questions:
 - (i) Whether there is a real risk that the appellant's persecutor might, within a reasonably foreseeable time, discover her whereabouts if she returned to Tunisia;
 - (ii) Whether the appellant would be afforded sufficient protection by the authorities in light of the evidence relating to the particular characteristics of her persecutor and the background evidence relating to the level of protection afforded to women who fear sexual violence in Tunisia.
9. In the light of the present need to take precautions against the spread of Covid-19, and the overriding objective expressed in the Procedure Rules, I have reached the

provisional view that the decision could be remade on the papers without an oral hearing, remote or otherwise.

DIRECTIONS

10. **The parties** shall have regard to the Presidential Guidance Note: No 1 2020: Arrangements During the Covid-19 Pandemic when complying with these directions.
11. **If there is no objection to the decision being remade based on written submissions**, the following directions shall apply:
 - (i) **The appellant** shall be responsible for compiling and serving an agreed consolidated bundle of documents which both parties can rely on. The bundle should be compiled and served in accordance with the Presidential Guidance Note [23-26] within **21 days** of the date these directions are sent (the date of sending is on the covering letter or covering email).
 - (ii) **The appellant** shall file written submissions within **21 days** of the date these directions are sent.
 - (iii) **The respondent** shall file written submissions within **28 days** of the date these directions are sent.
 - (iv) **The appellant** shall file any response within **35 days** of the date these directions are sent.
12. The Upper Tribunal will then consider the written submissions and remake the decision.
13. **If there is an objection to the decision being remade based on written submissions**, the party who objects shall serve written reasons by email within **7 days** of the date this decision and directions is sent by the Upper Tribunal (the date of sending is on the covering letter or covering email). Without prejudice to the Tribunal's consideration of any such objections, any objection should state whether the party is willing to proceed by way of a remote hearing instead. The parties shall also file and serve:
 - (i) Skype contact details and a contact telephone number for any person who wishes to attend the hearing remotely, which might include the advocates, the original appellant or an instructing solicitor; and
 - (ii) dates to avoid in the period 01 July 2020 to 28 August 2020.
14. The parties are at liberty to apply to amend these directions, giving reasons, if they face significant practical difficulties in complying.

15. Documents and submissions filed in response to these directions may be sent by, or attached to, an email to [email] using the Tribunal's reference number (found at the top of these directions) as the subject line. Attachments must not exceed 15 MB.
16. Service on the Secretary of State may be to [email] and to the original appellant, in the absence of any contrary instruction, by use of any address apparent from the service of these directions.

DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

The decision will be remade in due course following receipt of further submissions

Signed *M.Canavan* Date 14 May 2020
Upper Tribunal Judge Canavan