



**Upper Tribunal  
(Immigration and Asylum Chamber)** Appeal Number: PA/09754/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7<sup>th</sup> November 2019**

**Decision & Reasons  
Promulgated  
On 16<sup>th</sup> December 2019**

**Before**

**UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**MRS Z M  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Saeed instructed by Aman Solicitors Advocates  
For the Respondent: Mr D Clarke, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals, with permission, against the decision of First-tier Tribunal Judge Mitchell promulgated on 29 August 2019 on seven differing grounds.
2. The appellant is a Lebanese national born on 20<sup>th</sup> June 1993, who claims to fear persecution if she is returned to Lebanon because she married a man against the wishes of her father. She claimed asylum on 17<sup>th</sup> November 2017 having been granted temporary admission

whilst in transit to the USA. Her asylum claim was refused on 25<sup>th</sup> July 2018 and her appeal was dismissed by the First-tier Tribunal on 7<sup>th</sup> December 2018. An error of law was found in that decision and the matter remitted back to the First-tier Tribunal. The decision of First-tier Tribunal Judge Mitchell is therefore the second attempt at deciding this matter.

3. The grounds of appeal were discursive but as follows: -

### **Ground 1**

4. The judge made various errors which cumulatively amounted to an error of law as they show that the judge failed to consider the appeal properly. The judge referred to the country evidence at paragraphs 10 and 11 as being out of date which was not correct. The respondent's Operational Guidance Note was dated from June 2009 but still the most up to date for Lebanon.
5. The obtaining of the audio recording was not raised by the respondent or during the hearing and the appellant was denied the opportunity to address the issue, whereby she could have explained whether she had an audio recording and whether it supported her version of events.
6. At paragraph 26c of the decision, the appellant was not asked when she last had contact with her husband but why she was not able to contact him if needed. This mistake was repeated at 52g and 60.

### **Ground 2**

7. The judge applied the wrong approach to paragraph 339L of the Immigration Rules. At paragraph 49b it was perverse to suggest the appellant should have obtained a witness statement from her husband when he was no longer responding to her efforts to contact him. The issues raised at 49d in relation to 'no attempt' being made to obtain information about the reporting of the incident and the subsequent investigation was not raised at the hearing and she was thus denied any opportunity to explain whether she had made any attempts prior to 2018 to obtain documentary evidence. The respondent did not cross-examine the appellant about documents provided and merely relied on the reasons for refusal letter which did not raise the issue. Honour crimes in Lebanon are rare but that did not mean that the appellant's account ran counter to the general information.
8. It was irrelevant that the appellant failed to claim asylum in Nigeria because paragraph 339L only required consideration of asylum claims within the EU.

### **Ground 3**

9. It was unfair of the First-tier Tribunal to find the appellant displayed a lack of candour about her trips to Beirut when she was not asked about them in her asylum interview. The first time she was asked during cross-examination was in the appeal hearing.

#### **Ground 4**

10. At paragraphs 45 and 61 of the decision, it was submitted the judge had erred in the assessment of evidence and had given inadequate reasoning for the decision to attach little weight to it. The appellant was criticised for not providing a witness statement, but she gave her evidence-in-chief about the voicemail and the conversation. It is for the appellant to choose how she gives her evidence. The judge's finding at 45b of the decision was perverse. The transcripts of the conversations provided context and content of the recording, albeit it was served late. The conclusion that the respondent could have decided to arrange for its own transcription went beyond the respondent's own case. At the hearing the respondent stated that the evidence had not been served on the respondent and he could not accept service, but this was not true as the respondent was served the day before. The judge's reasoning was inadequate.

#### **Ground 5**

11. The judge found that the hostility was directed only towards the appellant's husband in Lebanon but there was no reasoning for this, and the First-tier Tribunal failed to consider the risk to the appellant on the basis that she entered into a relationship that her family were hostile towards. The judge did not explain why the risk to the appellant would now be lower than it was before. There was no evidence that returning to Lebanon after a passage of time without her husband would diminish the risk to her.

#### **Ground 6**

12. Owing to the errors the finding that the appellant could internally relocate was unsustainable.

#### **Ground 7**

13. The judge's findings at paragraph 66 were contrary to the judgment of the House of Lords in *EM (Lebanon) v The Secretary of State for the Home Department [2008] UKHL 64* where the House explained that women have no rights under the family law system in Lebanon. There was no sufficiency of protection available.

#### **The Hearing**

14. At the hearing the appellant's representative relied on his extensive written grounds for permission to appeal. He submitted that issues were not raised by the judge such as that relating to the audio

recording. He took the Tribunal through the detail of the decision identifying the arguable errors of law. He submitted that the interview was unreliable because of the differing dialects.

## **Analysis**

### **Ground 1**

15. In relation to ground 1 the judge at paragraph 10 stated,

*“The country evidence supplied by Mrs M’s solicitors was largely irrelevant or out-of-date”.*

16. The appellant’s representatives complained that the Operational Guidance Note for Lebanon dated 10<sup>th</sup> June 2009 had not been withdrawn and at paragraph 3.9.13 the conclusion states as follows in that report: -

*“Domestic violence and honour crimes are serious problems in Lebanon and the authorities are not always able and willing to provide sufficiency of protection. However, protection may be available in individual cases from the authorities, NGOs or extended family. Alternatively, internal relocation to escape a localised threat from a husband or member of the family may be an option and would not be unduly harsh in many cases. Factors such as the economic, social and professional background of an individual claimant as well as other factors including the individual’s support network must be carefully considered when determining the viability or otherwise of internal relocation. A grant of Humanitarian Protection may be appropriate in some cases”.*

17. The judge stated this at paragraphs 11 and 12 of the decision: -

*“11. The most up-to-date and relevant evidence supplied by Mrs M’s solicitors was a paper from Azzra Charara Baydoun, a professor of social psychology at the Lebanese University, produced for a UN expert group meeting in New York on 12 October 2011 convened by the UN rapporteur on violence against women. This paper is detailed and extensively referenced. It states honour crimes in Lebanon are rare and that while there may be some underreporting:*

*... widespread urbanisation, the proliferation of media and the changing roles of women in Lebanon has made it difficult for such crime to go unnoticed. Furthermore, those reported are thoroughly investigated and the accused is tried in a court of law.*

12. *Reliance was placed by Mr Saeed upon an Operational Guidance Note (OGN) relating to Lebanon produced by the Respondent in 2009 and subsequently withdrawn. In particular, Mr Saeed placed reliance on paragraph 3.9.13 which states:*

*Conclusion: domestic violence and honour crimes are serious problems in Lebanon and the authorities are not always able and willing to provide sufficiency of protection. However, protection may be available in individual cases from the authorities, NGOs or extended family. Alternatively, internal relocation to escape a localised threat from a husband or member of the family may be an option and would not be unduly harsh in many cases. Factors such as the economic, social and professional background of an individual claimant as well as other factors including the individual's support network must be carefully considered when determining the viability or otherwise of internal relocation. A grant of Humanitarian Protection may be appropriate in some cases."*

18. Albeit that at the hearing it was confirmed before me that this OGN had not been withdrawn it was clearly written some ten years ago and dated. That is evidenced by the fact that at paragraphs 54 and 55 of the reasons for refusal letter that Operational Guidance is not referred to. It would appear that it is not longer relied upon by the Secretary of State.
19. That said, the judge as can be seen at paragraphs 13, 14 and 15 did go on to consider the import of the Operational Guidance as relied on by Mr Saeed at the hearing. It is clear from paragraphs 13 and 14 of the judge's decision that he concluded that as far as the honour crimes were concerned the basis for the report reaching the conclusion at 3.9.13 was because: -

*"13. In so far as honour crimes are concerned, the basis for reaching that conclusion was: (i) as of 2008, the legal system remained discriminatory in its handling of honour crimes as there was the potential for a reduced sentence if a crime was in response to 'unacceptable sexual relations conducted by the victim'; and, (ii) every year a number of women were killed by male relatives under the pretext of defending family honour.*

Thus, the judge addressed the Operational Guidance but continued in his reasoning;

14. *As to point (i), Professor Baydoun's paper explains that between 1999 and 2007 courts rarely reduced sentences on this basis. As for point (ii), the OGN also says honour crimes*

are not widespread and the authorities are willing and able to offer sufficiency of protection in some cases. The evidential basis for saying 'some cases' and not most or all cases is not explained in the OGN."

20. It is clear that the judge analysed the basis of the Operational Guidance Note and the reference to the discriminatory legal system. However, as he spelt out in paragraph 14, Professor Baydoun's paper explains that between 1999 and 2007 the courts discriminatory approach to sentences was ameliorated, but moreover the evidential basis for saying the authorities gave sufficiency of protection in "some cases" and not most or all cases was not explained in the OGN. Clearly, on the basis of Professor Baydoun's report, which the judge was under a duty to consider, the judge found in line with *Horvath v SSHD [2000] UKHL 37* that there was an effective legal system and security services willing to implement the law of which the appellant could avail herself. The phraseology of the judge might have contained more clarity but as *Horvath* points out "no state can achieve complete protection against isolated and random attacks" and it was clearly concluded that the authorities in Lebanon were, on more up to date evidence on which the judge relied, able to provide effective protection to the standard set out in *Horvath*.
21. Although he may have erred in his reference to the guidance being withdrawn it is not the case that the judge simply ignored the OGN.
22. With respect to the issue of the audio recording it was open to the judge to take the approach that he did. The issue as to the consistency was raised by the appellant's representatives themselves in the skeleton argument and they must have been aware that the appellant's asylum interview was audio recorded from the outset because the interview record states that it was. Having asserted, and it is clear at page 2 of the asylum interview that it was recorded, it was open to the appellant's solicitors to obtain a recording from the date that the interview had taken place which was on 1<sup>st</sup> May 2018. This does not appear to have occurred.
23. It is also clear from the decision of the judge when assessing the issue, for example, of marriage that there were some distinct inconsistencies in the evidence and contrasts between the answers to some very straightforward questions between the asylum interview, such as how many witnesses were at the wedding, and her witness statement. The responses clearly demonstrate the appellant understood the question. In the interview she volunteered, without being asked, that there were two witnesses [AIR 68], whilst in her subsequent witness statement, as the judge recorded [24b], she stated that there were no witnesses. It was open to the judge to consider the interview record, albeit, as he did, with caution which he referenced.

24. The point made in relation to the contact with the husband, Mr H, was that her contact appeared to be in a developing process, or rather a fluid process, but ultimately at 26d the judge found that there was contact via the Beirut-based lawyer who had sent the appellant a document on 24<sup>th</sup> August 2018 in which he states that his client (Mr H) “wants to discuss with you about meeting his child K and visiting rights”. The record of the information in the determination records that she was asked to be more specific about when she last had contact with Mr H, but this is not inconsistent with being asked why she was not able to contact him if needed, particularly in view of the fact that he had instructed a lawyer.
25. The judge is not obliged to record each and every piece of oral information that is given *Budhathoki (reasons for decisions) [2014] UKUT 00341*: judges needed to resolve the key conflicts in evidence and explain in clear and brief terms their reasons for preferring one case to the other so parties could understand why they had lost . The judge clearly recorded that she had “not had contact with him [the husband] for ‘a few months’ and the reason for the lack of contact was that he had stopped responding to her”. The point being made that it was only in re-examination she disclosed she had been in contact with him until relatively recently. That finding does not undermine the overall credibility finding.

## **Ground 2**

26. It was argued that the judge applied the wrong approach to paragraph 339L, for example, at paragraph 49b in relation to the reasonability of expecting her to obtain a witness statement from her husband. As stated, this appellant had access to a lawyer and her husband’s lawyer and, at the very least, could have disclosed an attempt to obtain a statement from the husband via the lawyer, particularly bearing in mind the ample time that she had. The judge makes the point that given the failure of her appeal the appellant would have appreciated the significance of evidence in January 2019 and her solicitors were notified of a rehearing in March 2019. Mr Saeed submitted that the approach of the judge in expecting the appellant to obtain a witness statement from the husband was perverse. Not only is the threshold for perversity high, and not met here but in view of the contact with the lawyer the attempt at least was reasonably expected.
27. As the judge states at paragraph 45g, “The duty of the parties to help the Tribunal further the overriding objective includes the earlier exchange of evidence”. In relation to this document together with the audio transcripts the Tribunal had “specifically directed that all documents to be relied upon at the hearing had to be filed and served no later than five days before the hearing”. They were not.

28. As regards paragraph 49d the judge pointed out, and he was reasonably entitled to do so without committing an error of law, that the appellant had waited for over five years before making any enquiries about the subsequent investigation to the murder attempt and he notes that the lawyers' recent attempt to obtain records did not explain the steps he took. It was thus open to the judge to take the approach he did in relation to paragraph 339L. In particular it is open to the judge to make observations about the evident fact that no attempt had been made to locate the documentation of a murder investigation within the five years since the claimed incident took place. This is adequately explained and reasoned by the judge.
29. The judge also sufficiently explained at paragraph 50 that the country evidence indicated honour crimes were rare but that "this does not mean Mrs M's description of events must be wrong". The judge, in fairness, acknowledged that to run counter to the general information did not mean that it was totally out of the question but as the judge proceeds to observe, the coherence of her account such as the almost immediate disclosure of the marriage to her family and the decision to travel towards rather than away from the danger on 30<sup>th</sup> August 2012 was not believable or credible.
30. It is not an irrelevant consideration to state that she might have claimed asylum in Nigeria. Nothing in Article 4 of the European Directive suggests that Nigeria is an excluded country for these purposes.

### **Ground 3**

31. It was entirely open to the judge to criticise the appellant about her trips to Beirut from Nigeria and her lack of candour. In her screening interview at 4.1 she clearly states, "*We both fled to Nigeria where we lived for five years*". Moreover, at Question 21 of her Asylum interview she was asked '*what date did you leave Lebanon?*' and she replied, '*I can't remember but September 2012*'. That was a direct question which she clearly understood, and her answer was simply incorrect. There was a clear inference that she left in 2012 not that she returned every six months to obtain further visas. She had a duty under paragraph 339L of the Immigration Rules to provide all material factors and she did not.
32. Throughout her interview, for example at question 25 she stated, "What do you fear would happen to you if you returned?" - "I will be killed".
33. At question 127 she was asked: -

*"127. How many days did you remain in Lebanon following this incident?"*



*Response - Less than one month.*

128. *So why couldn't you return to Lebanon and relocate to Tripoli?*

*Response - I am not safe anywhere in Lebanon.*

129. *How would they know if you returned?*

*Response - Anybody can tip on us and everybody aware of the situation".*

34. Nowhere does she identify that she had returned to Lebanon. She states she only remained there for one month following the incident. Indeed, she confirmed, in sequence, that she could **not** return. Mr Saeed submitted that the interview was unreliable because of the differing dialects but at the end of the interview the appellant specifically was asked and stated that she had understood the questions. As the judge found for cogent reasons, at paragraph 52g he was concerned about her failure to mention her trips back to Beirut until she was being cross-examined. Second, that it was only in her re-examination that she disclosed that she had been in contact with Mr H until relatively recently.

35. It was thus open to the judge to criticise the appellant on the basis of paragraph 339L and that she had failed to provide all material factors at her disposal. The fact of her return to Beirut from Nigeria to which they had fled to renew her visit visa clearly supports the judge's view of her "lack of candour" and this is adequately explained by the judge on a careful reading of the decision.

#### **Ground 4**

36. It may be that the appellant chose not to disclose the audio tapes or the evidence thereto until the very last minute but the judge gave a raft of reasons at paragraph 45 for finding the manner in which the evidence had been supplied unsatisfactory, not least because there was no explanation of how the telephone call came to be recorded, such that it could be sent to the solicitors, the transcripts appeared to be extracts of a longer message with no context, the audio files of the recordings had not been supplied to the Home Office and that the explanation from the appellant's solicitors, such that in the past the Home Office did not want audio files, was inadequate bearing in mind the appellant had been in possession of the audio files for seven months. The judge found that the explanation for the late production, transcription and provision of the audio tapes was unsatisfactory in the overall context that the appellant had already experienced a previous appeal and would "have appreciated the significance of this evidence in January" (paragraph 45g). As pointed out by Mr Clarke the judge did not draw an adverse inference per se

because of the failure to provide the recording but attached less weight to the evidence.

37. Indeed, it was open to the judge to place less weight on the evidence bearing in mind the evidence had not been provided in accordance with the Tribunal directions and the Secretary of State had been denied the opportunity to examine this evidence, which must in itself be prejudicial. To state that the analysis went beyond the respondent's own case is not sustainable. The judge was entitled to make the observation and take the approach he did, bearing in mind the respondent complained that the evidence was not served properly (as indeed it was not), as the judge pointed out, in accordance with the Tribunal directions. This ground is without merit. The weight to be given by the judge to evidence is a matter for the Judge. Mere disagreement about the weight to be accorded to the evidence, which is a matter for the judge, should not be characterised as an error of law, *Herrera v SSHD [2018] EWCA Civ 412*.

### **Ground 5**

38. The reasoning given for the statement that the hostility was directed towards her ex-husband was explained at paragraphs 28 and 29 of the determination, specifically that the car of Mr H had been shot at whilst the father of the appellant and her ex-husband and an intervenor by the name of S L were inside in Mr L's house. The judge reasoned as follows at paragraph 29: -

*"29. Mrs M provides two documents which are said to substantiate her account of this incident:*

*a. A document in Arabic which, at her asylum interview, Mrs M described as Mr H's statement taken by the police in Jowaya. However, the translation supplied by Mrs M indicates this document is dated 1 September 2012, two days after Mrs M says she and Mr H left Jowaya. In fact, based upon the translation, this document appears to be a letter from Mr H to the General Prosecutor of South Lebanon. In the letter, Mr H complains his car was shot at and 'afterwards they tried to invade the house to kill me'. He does not suggest they were interested in harming Mrs M. He also says 'the respondents ambushed me in Daeir-Kifa town three hours prior to this incident. There were two cars full of armed personal who tried to kill me there'. Again, he does not suggest Mrs M was at risk.*

*b. The second document is also in Arabic. According to the translations supplied by Mrs M, this is an affidavit from Mr I, the lawyer in Beirut to whom I have already referred. The translation says the affidavit is*

*dated 11 February 2018. As most of the events referred to in the affidavit are events which are unlikely to be within the direct knowledge of Mr I, and as the source of the information he refers to is not identified, I attach little weight to this evidence. The points to which I do attach weight, because they appear to be within Mr I's direct knowledge, are that at the time the affidavit was produced he was assisting Mrs M as well as Mr H, that he had recently attempted to obtain from the Lebanese authorities records relating to the investigation into the 29 August 2012 incident, and he was told no records could be found. No details are given about these enquiries such as who was contacted, and any explanations supplied for the lack of records."*

39. It is clear that the judge did not accept that there was a real risk of persecution to the appellant, for a variety of reasons which can be found throughout the determination, not the least because he found her not to be credible and this was adequately explained.

#### **Ground 6**

40. This is a composite ground. For the reasons given above the judge gave adequate explanation and reasoning for his findings that the appellant was not at risk. Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge, *Shizad (sufficiency of reasons: set aside) [2013] UKUT 00085 (IAC)*. That is what the judge did.
41. The above criticisms in relation to the specific parts of evidence even if sustainable, which I find they are not, are not material because as the judge states at paragraph 66: -

*"Were Mrs M to relocate, I am satisfied there would be sufficiency of protection in relation to any residual risk. I reach this conclusion primarily in light of the country evidence. It is also relevant that Mrs M has failed to establish that there was not sufficient protection available to her in 2012 and it is relevant that Mrs M made trips back to Beirut for 3 or 4 years after she moved to Nigeria."*

Those findings were open to the judge and run to the heart of the decision. Nothing in this statement runs counter to *EM (Lebanon)* as cited above and which relates principally to family law. The judge specifically found that there was a sufficiency of protection available to her in 2012 and indeed he records that the police removed the appellant's brother for questioning to a police station. Moreover, he

notes specifically, on her own indisputable evidence that she made trips back to Beirut for three or four years after moving to Nigeria in which she appeared to have suffered no harm.

42. Overall the judge carefully addressed the relevant facts, directed himself appropriately and gave sound and cogent explanations for his findings.

**Notice of Decision**

43. For the above reasoning I find that there is no error of law in the First-tier Tribunal decision and the decision will stand. The appeal remains dismissed.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

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. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Helen Rimington

Date 12<sup>th</sup> December 2019

Upper Tribunal Judge Rimington