



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001647

First-tier Tribunal Nos: PA/50270/2021
IA/00661/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 23 December 2024**

Before

UPPER TRIBUNAL JUDGE OWENS

Between

**AK
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr McGarvey instructed by NLS Solicitors
For the Respondent: Ms S Rushforth, Senior Presenting Officer

Heard at Cardiff Civil Justice Centre on 14 June 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant 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. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This appeal comes before me for re-making. Deputy Upper Tribunal Judge Murray set aside the decision of First-tier Tribunal Judge Lester (“the judge”) dated 1 February 2022 dismissing the appellant’s appeal on protection grounds for the reasons given in her error of law decision annexed to this decision at Appendix A. Various findings were preserved which I will deal with in due course.

Appellant's Background

2. The appellant is a national of Jordan. He claimed asylum in the United Kingdom on the grounds that he has a well-founded fear of persecution on the basis of having converted to the Baha'i faith. He claimed to be at risk from his family, who he asserted had threatened to kill him, shot at him and held him against his will. The case was also put on the basis that because of his conversion to the Baha'i religion he would be at risk because he would be viewed as an apostate by society and the Jordanian authorities.
3. The judge made negative credibility findings in respect of the appellant's asserted fear from his family and these were upheld as lawful by the Upper Tribunal. The part of the decision that was set aside related to the risk to the appellant by virtue of his status as an apostate.

Issue in the Appeal

4. The only remaining issue in this appeal is whether the appellant would be at real risk of serious harm if returned to Jordan because of his status as an apostate. Brief submissions were also made in respect of Articles 8, 9, 10 and 14 of the ECHR.

The Hearing

5. The appellant attended the hearing in person. He was not called to give any further evidence although there was an independent court interpreter present to explain the proceedings to him. The appellant confirmed that he understood the interpreter who was speaking Arabic. Both parties made detailed submissions which I will set out below.

Documentation

6. At the outset of the hearing both parties confirmed they had sight of the same documentation. This included the original respondent's bundle, the original appellant's bundle, the respondent's review, the original skeleton argument, the grant of permission, the decision of First-tier Tribunal Judge Lester and the error of law decision by Deputy Upper Tribunal Judge Murray. I was also provided with a further skeleton argument by Mr McGarvey and this in turn referred to the latest USSD Jordan 2022 International Religious Freedom Report "the US Report 2022"), there was a link to this document in the skeleton argument.

Agreed findings

7. The starting point in this appeal are those matters which are accepted by the respondent and the preserved findings of First-tier Tribunal Judge Lester.
8. The facts that have been accepted by the respondent are as follows:
 - (1) The appellant is Jordanian and his identity is as he claims.
 - (2) The appellant was born a Muslim.
 - (3) The appellant has converted to the Baha'i faith.

Preserved Findings

9. DUTJ Murray preserved Judge Lester's findings in [37] to [63].
10. It is somewhat difficult to discern which precise findings Judge Lester made because from [37] to [63] he primarily give reasons for why he rejected the appellant's claim that his father attempted to kill him and found the appellant to be lacking in credibility. His summary is "Overall I find him to not be credible on this topic".
11. The representatives before me agreed that the judge made a clear finding that the appellant had provided untruthful information in support of visa his application and how he had come to obtain a visa. The judge found that the appellant gave contradictory answers as to who he was in contact with in Jordan, although it was agreed by the representatives that there was no express or specific finding about who the judge found he is in contact with. The judge rejected the appellant's evidence that his cousins and father had kidnapped him and that his father had shot at him. The inference from this is that the judge made a finding that these events did not happen.
12. I am unable to discern from the decision whether the judge accepted or not that the appellant was in general threatened by his family and their attitude to his conversion because there are no clear findings on this issue.
13. From the wording of [61], it seems that the judge accepted that his family threatened to kill him and that he then moved to another part of Jordan. The judge did not find that the appellant hid within Jordan, nor that he was located by his family, kidnapped by them or held in a cellar until he indicated that he would return to Islam, nor that he subsequently escaped or was shot at by his father, nor that his paternal cousin is very powerful and works for the intelligence services.
14. I expressed my concern to the representatives that there was no clear finding as to whether the appellant's family had disapproved of his conversion or whether the judge found that he had been threatened in general or abused notwithstanding that the family had not made threats to kill. Ms Rushforth's position was that the judge had neither made positive nor negative findings on these issues. Mr McGarvey submitted that it was open to me to find that the appellant was, despite not at risk from being killed from his family, at risk of being ostracised, discriminated against or disowned by his family based on his evidence and the background material because there were no negative preserved findings in respect of this aspect of his evidence.
15. In these circumstances, where there appears to be a lacuna in the findings which are necessary for me to determine the appeal, I find it incumbent upon myself to make further findings on these matters.

Further findings

16. The appellant gave an extremely full asylum interview explaining the precise reasons for his conversion from Islam to Baha'i. The appellant explained that he was an engineer in his home country with a diploma in aircraft engineering.
17. He said that he grew up in an extremely religious family. His father was a "prayer caller" in the mosque and he belonged to the Muslim Brotherhood. He used to hold Muslim Brotherhood meetings in the family home. He described his

family as being “extreme Muslims”. When he was younger, he was not allowed to wear shorts; he was not allowed to mix amongst females even within his own family; he was not allowed to celebrate his birthday; he used to have to pray early in the morning and if he did not wake up for prayers, his father would react violently; he had to attend every single prayer at the mosque and come straight back to the house after the last prayer; he was not allowed to carry his phone; he was not allowed to have a television in his house; television was forbidden; he was not allowed to watch films or listen to songs; he had to read the Quran and he was not allowed to watch cartoons.

18. He said he was scared of his father who was very strict which made him feel “mentally destroyed”. After he moved out of the family home he would return to his father’s house on Fridays to attend prayers and his father continued to telephone him in the morning to make sure he had woken up for morning prayers.

19. He said that he learnt about the Baha’i religion from a colleague with whom he was attending a course in 2017. He noticed that his colleague did not go to prayer and that through him he learnt more about different way of thinking in relation to equality between sexes, monogamy and social justice.

20. At paragraph 63 of his asylum interview he explained that he began to stop attending the mosque and that he was:

“trying to give excuses to my dad that I don’t want to go to the mosque, my father was asking me why I don’t pray, my father was pushing me to donate 50 dinars to the mosque every month and I had to go every Friday with him to clean the mosque before the prayer starts, when my father used to call his friends, the Brotherhood, I used to give an excuse to go out of the house”.

21. At paragraph 85 of the asylum interview he said that he told his family that he wanted to convert. At paragraph 91, he said that when he told his father, his father slapped him and told him he would become an “infidel” and an “atheist”, and he started beating him up and the appellant fled from his father’s house.

22. The remainder of the account of being kidnapped by his family, threatened with a gun and escaping was not accepted by the judge.

23. I turn to the decision letter at paragraphs 25,26 and 27 where it is stated:

“25. You mentioned that you were raised by Muslim Brotherhood members and that you found their interpretation of Islam ‘extremist’ (AIR 28). External sources indicate that the Muslim brotherhood is a pan-Islamic movement with both charitable and political arms, classed in some countries as a proscribed organisation.

26. Moreover, it is noted that your nationality has been accepted. According to external sources, ninety two percent of Jordanians are Sunni Muslims. It is therefore accepted that you were a Muslim.

Conversion

27. You were asked about your claimed conversion in order to establish whether or not you follow the Baha’i faith. Information you provided in your answers within the substantive interview was broadly correct”.

24. The refusal letter notes that he understands the Baha'i greeting, is aware of the books, that the religion places a specific emphasis on social unity and peace, that members are discouraged from political activism and that there are three types of prayer, consistent with him being a convert.
25. At paragraph 34 and 35 of the refusal letter it is said:
- “34. However, your subjective account of your conversion is consistent. You have stated that you believe Islam to be a backward looking and violent religion (AIR 46). You mention that you were frustrated with the restrictions of your Muslim brotherhood-influenced Sunni upbringing and that you found that, in comparison, Baha'i was a religion that you could not find fault with.
35. You have demonstrated a level of knowledge of the religion consistent with having a beginner level of understanding. Your subjective account mentions a growing dissatisfaction with your former Islamic beliefs and upbringing from an early age, stemming from what you perceive as its restrictive practices, and moves onto your subsequent conversion in a coherent way (AIR 33, 37, 39, 129). It is accepted that you are a Baha'i”.
26. From this, I find that the respondent in the original decision letter, largely accepted the appellant's account of his upbringing and the reason why the appellant wished to convert from Islam. The respondent has not provided any reasons for disbelieving the appellant's account of his upbringing.
27. The judge did not make any specific findings on this aspect of the appellant's evidence. Although I acknowledge that there are discrepancies in the appellant's evidence in relation to how he came to the UK and the shooting incident, I find that the appellant's account in his asylum interview of his upbringing, his conversion and the immediate attitude of his family was detailed and internally consistent and that it was accepted by the respondent. I therefore make the following findings in respect of the appellant's family.
28. I find that the appellant was brought up by a very strict Muslim father in a strict Muslim household. I find that his father called people to prayer and was a member of the Muslim Brotherhood and he held meetings in his home. I find that the appellant was expected to conform to a strict version of Islam, not mixing even with female members of his household, he was prohibited from watching television, listening to films and music, he had to pray on every occasion, he was expected to attend mosque on Fridays and assist his father, he was not allowed to wear certain clothes or celebrate his birthdays. I also accept that the appellant was not very happy with this strict regime which is why he converted away from Islam.
29. I find that the appellant told his family that he had left Islam and embraced another religion.
30. I turn to the background evidence on societal attitudes towards converts, As Ms Rushforth pointed out, the evidence in relation to apostates in Jordan mainly concerns Christians. There is very little background material in respect of Baha'i converts in Jordan.
31. The evidence of the expert and the background evidence referred to in the skeleton argument refers specifically to Baha'i converts. I will turn to the

weight that I can give to the expert report later in the decision where I address risk.

32. I note that the background evidence quoted in the skeleton argument is from the US Report 2022 which I find to be an objective piece of background material. This states the following:

“The Constitution does not address the right to convert to another faith, nor are there penalties under civil law for doing so. The Constitution and the law allow Sharia courts to determine civil status affairs for Muslims; these courts do not recognise converts from Islam to other religions. Under Sharia, converts from Islam and their children are considered Muslim apostates and are still subject to Sharia”.

33. The report states that converts from Islam to Christianity reported “continued social ostracism, threats and physical and verbal abuse including beatings, insults and intimidation from family members, neighbours and community or tribal members”. Further, it states that:

“during the year, there were cases of atheists reporting physical abuse by family members for rejecting their family’s religious beliefs. When the victims reported the incidents to the police, officers allegedly dismissed them calling the issue a family matter and adding that the authorities were unable to intervene in these cases”.

34. This evidence is consistent with the background evidence before the Tribunal about the general attitude towards converts who are considered as apostates (as opposed to atheists).

35. I am satisfied that the background evidence is consistent with the appellant’s claim that his family was displeased at his conversion. I find that it is highly plausible that a family which had such a strict adherence to the practices of Islam would be particularly displeased at a member of that family leaving the faith. From the appellant’s evidence his father was a strict and controlling man who used physical violence to discipline him when he was a child and I accept the appellant’s evidence that his father was very angry with him and unhappy about his conversion. In this context, I find to the lower standard that when he informed his father, his father slapped and hit him and threatened to kill him as the appellant claimed in his statement and interview (and which appears to have been accepted by the judge). I find that at this point the appellant left his employment and moved to another part of Jordan. I also find that his family has ostracised him and strongly disapproves of his action.

36. In view of the preserved findings I go no further than this in respect of the risk of physical harm that the appellant would face from his family because his claim that his family would kill him and shot at him and kidnapped him have been found not to be credible.

37. I also find that the appellant is committed to his new faith and has no intention of returning to Islam. I accept that he would continue to practice the Baha’i faith on return, albeit privately. I find that he would not openly practice Islam. He would not attend the mosque, Friday prayers, observe Ramadan or celebrate Eid.

Submissions

38. Ms Rushforth relied on the reasons for refusal letter and the respondent's review. She submitted that given that the risk to the appellant from his family had fallen away, because of the findings of Judge Lester the only remaining issue was whether there was a risk to the appellant from the state. The respondent's position is that there is no risk from the state. In respect of the expert report she relied on the reasons for refusal letter. She did not formally concede that the expert did have sufficient expertise but did not make any further submissions in relation to the report.
39. In respect of the appellant being at risk because he is an apostate, she submitted that there is no evidence that he has previously been persecuted on account of this. There is no evidence he would openly practice his religion in Jordan. He has not done so from the safety of the UK. He prays at home and reads the holy book. This minimises the risk that the state would find out that he is an apostate. In any event the contents of the expert report are not sufficient to conclude that the appellant is at risk from the state. There were no examples in the report of the persecution of Baha'i converts. All the examples given related to Christian converts of which there were a total of 5 examples the last of which was 15 years ago. The expert did not give a single example of a conviction of a Baha'i convert. She asked me not to rely on the evidence at paragraph 95 of the expert report where it was stated that a source from within Jordan stated that the Jordanian state would not necessarily publicise any apostasy proceedings because the source is unknown and his comment was speculative in any event. She submitted that Dr Fatah's report on its own was insufficient to demonstrate that the appellant would be convicted of apostasy given that no-one else has ever been.
40. In respect of social discrimination, she submitted that this did not meet the threshold of persecution. Further, it is extremely unlikely that the appellant's conversion would come to the attention of the authorities in the first place. She asked me to dismiss the appeal.
41. Mr McGarvey relied on his skeleton argument and the most recent UN Report 2022. I will not set out all of his lengthy submissions here. In summary, he submitted that the appellant is an apostate rather than a Baha'i because he is someone who was born into the Muslim faith and who has converted. He is an unbeliever and there is a fatwa issued by the higher Islamic court against all unbelievers. All apostates are treated the same therefore it is legitimate to compare his situation with Christian converts or other converts. There is a risk he may be punished by sharia Islamic Courts, he is likely to be stripped entirely of his civil rights including his right to vote, to obtain employment, to marry and to register the birth of a child. The loss of all of these rights is inherently degrading. He could be convicted under other legislation in relation to national unity, public security or contempt of religion. He submitted that lesser forms of discrimination can cumulatively amount to persecution. This is state sponsored discrimination. Further there is the risk of social discrimination and even violence from the wider community. He emphasised the very small number of Bahais in the population which is about 25,000 people and amounts to 0.2 % of the population.
42. He submitted that weight can be given to Dr Fatah's report. He is an expert well known to the immigration courts. The appellant's evidence is that he would not renounce the Baha'i faith. He would continue to practice in Jordan. This would come to the attention of other people in the community because of his obvious

failure to carry out Sunni practices such as attending Friday prayers, observing Ramadan and celebrating Eid. This will very likely come to the attention of people where he lives. The objective evidence is that there are controls and surveillance.

The expert evidence

43. In support of his appeal the appellant has adduced an expert report prepared by Dr Rebwah Fatah dated 18 June 2021 which addresses the risks that the appellant would face in Jordan as an apostate. The respondent raised various objections to the report in the review. It is asserted that Dr Fateh is not an expert on Jordan, that he did not state whether his four visits to the country were on a personal or professional basis and that he “discloses” a disclaimer on his expertise. It is also asserted that the expert has not addressed why the appellant would be harmed when he was not previously harmed. I am specifically asked not to place weight on the expert’s conversation with a Jordanian official because no source was given. In response, Dr Fateh prepared an addendum report addressing the concerns of the respondent. Ms Rushforth did not strenuously pursue her submissions on the weight to be given to the expert report.
44. I have no hesitation in stating that I am satisfied that Dr Fateh is a suitable expert to comment on the treatment of apostates in Jordan. He sets out his expertise at length at the outset of report. He is a recognised expert on the middle east in general and has been working as an expert witness since 2000. He has given evidence in various Country Guidance cases. He has visited Jordan in person for professional reasons. He has produced a number of reports on Jordan. He has a number of well-connected associates in Jordan who he speaks to on a regular basis about the country situation. I also accept his argument that the treatment of apostates in Jordan is not to be viewed in a vacuum but against the wider cultural and religious regional context. His report contains detailed footnotes where he explains what evidence his opinions are based on and I note that much of the background material is based on independent reports from US Department of State, Open Doors USA and other sources. I do not accept that the disclaimer limits the weight I can give to the report. Dr Fateh clearly explains that he can only give his expert opinion to the best of his ability in the light of his research and the objective evidence which I find is a proper approach. His report sets out how converts from Islam have been treated in Jordan, which I find is relevant to assessing the risk to the appellant from the authorities. Finally, I am also satisfied that the unverified evidence referred to by the respondent is an interview with a manager in the Jordanian Ministry of Planning and Internal Cooperation. Dr Fateh clearly explained his role and the date and content of the conversation. I also note that this conversation which related to the desire of the Jordanian state to project a positive image of itself is supported by the background evidence in any event.
45. I take into account Ms Rushforth’s submission that there are no examples given of Baha’i converts being persecuted in the report and I will address this below. No objection has been taken to any other aspect of the report. I am satisfied that the concerns of the respondent have been adequately addressed and I place full reliance on the report in respect of the political background of apostates generally, their lack of civil and political rights, the risk of prosecution and of ostracization and violence from the community.

Background situation on treatment of the Bahai community and apostates in Jordan

46. I firstly find that because the appellant was born into the Muslim faith and has renounced that faith and converted to Bahai he will be considered as an "apostate" by the Jordanian authorities. I emphasise that this is a different matter to being born into the Baha'i faith and remaining in the faith. It is the fact of renunciation and conversion which is the crucial difference. I also find that in this context it is appropriate to rely on example of treatment of other apostates that is individuals who have converted from Islam to other religions such as Christianity because I find that the authorities treat all such people as apostates. There was insufficient evidence before me to find that there is some kind of hierarchy or that converts from one religion are treated any worse than converts to another religion. I am not in agreement with Ms Rushforth that the treatment of Christian converts is not relevant.
47. Secondly I note that the number of Bahai in Jordan form only a very small fraction of the population as a whole. There are over 11 million Jordanians of which only 23,000 or so are of the Baha'i faith. Dr Fateh's report states that there are approximately 1000 only, but the US State report gives the numbers as being 23,000 and I place more reliance on the US state report dated 2022 than the information the expert obtained from Al Jazeera in 2019. I accept that most Bahai are of Iranian origin and that the community is mainly located in Amman and Irbid. In contrast over 97.1% of the population are Sunni Muslims.
48. I therefore infer that only a very small number of people convert to the Baha'i religion which is why there is so little background evidence on what happens to these individuals. The appellant is in a tiny minority of people.
49. I also accept the expert evidence which is consistent with the background evidence that there is likely to be an attempt by the Jordanian authorities to present themselves as being tolerant to the outside world and that examples of repression may not be publicised. The manager from the Jordanian Ministry of Planning and international co-operation confirmed that public cases of apostasy are rare. However they also provided that apostasy cases may not be declared openly or allowed to be reported in order to preserve the country's reputation.
50. From the background material it is clear that Jordan is an authoritarian state. With few natural resources of its own and high unemployment, it is very dependent on subsidies from the US and other countries and is therefore keen to present itself as a modern and liberal country. The ADF International submission to the Office of the United Nations High Commissioner for Human rights (OHCHR) in 2018 stated that Open Doors an organisation dedicated to supporting persecuted Christians reported that Muslim converts to Christianity suffer heavy persecution but could not give examples because of security concerns. The report concluded that the reality for Christians in Jordan is probably even worse than the facts and statistics suggest. I find no reason why the situation would be any different for Bahais.
51. I also take into account from the reports that there are large number of refugees in Jordan. There are 2.4 million registered refugees from Palestine and between 1.3 million and 600,000 from Syria. I find from the background material that radicalised Sunnis and returning Jihadists from Syria and Iraq can pose a threat to religious minorities and that Jordan has a disproportionately

high number of Salafi Muslims. Jordan is a transit country for violent Islamic militants causing the threat of Islamic attacks. The Open Doors report in 2021 cites these factors as a reason for less tolerance to religious minorities. I have not been provided with any updated evidence on attitudes in Jordan since the invasion of Gaza but it is plausible that this may have ignited religious tension further. I also accept the evidence and find that Jordanian security services are very effective and its general intelligence department carries out surveillance operations with a broad range of objectives which means that monitoring is by no means exclusively applied to Christian communities. Monitoring includes phone-calls and social media usage.

Civil discrimination against Bahai

52. I make the following findings on the situation for those born into the Baha'i faith on the basis of the expert report and US report 2022.
53. Although the constitution provides protection and guarantees the freedom of religion to official religions, because the Baha'i religion is not recognised by the Jordanian authorities, Bahais are not protected by the constitution. This means that Bahais do not have their civil rights protected in Jordan. Bahais do not have their own temples, religious courts or educational classes and may only practice their religion in private.
54. Civil, personal and family matters in Jordan are dealt with under Sharia courts. Bahai are subject in this respect to state sponsored discrimination. They are denied the right to a personal status court to arrange Baha'i marriages, divorces and inheritance cases. It is difficult to obtain marriage and birth certificates. The child of a man registered with no religion will be denied a birth certificate which means that the child would be unable to register for school or receive citizenship. Bahais are forced to submit to Islamic inheritance law as they have no doctrinal courts of their own. This is problematic for the Baha'i community as their inheritance laws are different for instance in respect of daughters inheriting property.
55. The higher Islamic committee in Jordan has issued a Fatwa stating that the Bahai faith is not a religion and that the Bahai community are apostates.
56. Bahai events and celebrations are not permitted to protect the Bahai community from public violence.
57. I accept the expert opinion that it is likely that in addition to the legal discrimination it is plausible to assume that Bahai face some level of stigma and discrimination from the Muslim majority community.

Treatment of apostates

58. There is no right in the Jordanian constitution to convert to another faith. Although there are no penalties under civil law for converting, persons converting from Islam may be punished by Sharia courts. Sharia courts deem all converts as apostates.

59. Any member of society may file an apostasy complaint against such individual before the Sharia Public Prosecution. If tried by a Sharia Court it is likely that an apostate will be punished by being deemed officially as having no religion. Under Jordanian law this strips a person of their civil rights including the ability to obtain employment, marry, inherit money or bring up children. An individual who is already married with a child may have their marriage annulled and the custody of their child transferred to a Muslim family member or declare the child the ward of the state. The court may take away the individual's property rights and disinherit them.
60. Children born to marriages involving converts are deemed illegitimate and will be denied standard registration making it difficult for the children to attend school, access health services and receive documentation.
61. A conviction from the Sharia court can also result in imprisonment and fines.
62. Jordanian law heavily restricts speech critical of Islam. The penal code contains Articles criminalizing acts such as incitement of hatred, blasphemy against Abrahamic faiths, undermining the regime, or portraying citizens in a manner that violates their dignity. The penal code criminalizes insulting the Prophet Muhammad, punishable by one to three years' imprisonment. Written works, speeches, and actions intended to cause or resulting in sectarian strife, including conflicts between religious groups, are punishable by one to three years' imprisonment and a fine not exceeding 200 Jordanian dinars . The law also provides a term of imprisonment not exceeding three months or a fine not exceeding 20 dinars for anyone who publishes anything that offends religious feelings or beliefs and for anyone who speaks within earshot of another person in a public space and offends that individual's beliefs. The aim is to discourage people from expressing ideas that might be interpreted as contrary to the prevailing view of Islam.
63. Likewise, some converts to Christianity from Islam have reported instances of harassment by security officials, in-person and electronic surveillance, and bureaucratic delays or rejections of document requests, including passport applications. Others reported security forces pressured converts to denounce their conversions and to recite Quranic verses in their offices.
64. Converts from Islam face ostracism from their family and community and can face physical violence and verbal abuse. This treatment can also emanate from the local community. The Open Doors report states that:
- “a Christian convert can face oppression from a whole variety of sources namely government officials, ethnic group leaders, non-Christian religious leaders violent religious groups ordinary people and extended family. Converts are vulnerable primarily to pressure from family and community for whom restoration of family/tribal/community honour is a imperative that often drives ostracism and sometimes leads to violent responses or initiation of effective legal incapacitation through personal status courts. State authorities are sometimes complicit either actively through legal processes or through intelligence alerting families or passively through enabling the perpetration of violence with effective impunity”.
65. I see no reason why a Baha'i convert from a strict Muslim family would be treated any differently.

66. Against this background I address Ms Rushforth's three main issues which are how the wider community would know that the appellant is a convert, whether it is speculative to say that he would be discriminated against or mistreated in any way and whether the treatment he risks being subject to amounts to persecution.
67. The appellant was born a Muslim. I am not told whether his name or tribal affiliation will mark him out as such. I only note that much of the Baha'i population are of Iranian descent. Since the vast majority of the population are Sunni Muslims, most of the population will observe the requirements of Islam to pray particularly on a Friday, observe Ramadan and celebrate Eid and other Islamic religious holidays. I have found that the appellant will not return to Islam and will continue to practice the Baha'i faith on return. As Ms Rushforth submits this will involve primarily conducting his religious activities at home such as prayer and reading the holy book. I find that it will not be his positive activities that bring him to the attention of his local community wherever he lives but his absence of activities demonstrating his Islamic faith.
68. I find that after his return, it is quickly likely to come to the notice of the local community where the appellant is living, that the appellant is a convert of some nature. I take into account at this point that the appellant cannot be expected to lie if he has a genuine conviction (which he does) and that if he is asked whether he was born a Muslim he is likely to say yes. He cannot be expected to deny a protected characteristic. From the background evidence, I also find that his official documentation may also record him as being a Muslim. If the appellant is able to obtain employment (which will be difficult) it is also likely that his fellow employees would notice for instance his absence at prayer in the same way that he previously noted his colleague's failure to attend prayers. I also find that it is likely that the appellant's family will learn of his return in due course because of the ease of modern communication on social media. I find that it is reasonably likely on this basis that he will quickly be identified as a convert. In this respect, I note that the appellant left his employment and relocated after his family found out about his conversion and that he has not been employed since then.
69. On the basis of being a Baha'i alone, he will not be able to practise his religion in public, does not have his religion recognised by the constitution, is considered to be an apostate, is subject to a fatwa and is subject to state sponsored discrimination in respect of his civil and political rights such as access to the civil and personal courts as I have set out above. I am satisfied that this is a flagrant denial or gross violation of Article 9 ECHR the freedom of thought, conscience and religion (see R(on the application of Ullah v Special Adjudicator[2004] UKHL 26 INLR 381).
70. I turn to whether it is reasonably likely that a member of the public, or his family would denounce him to a Sharia Court. I find against the background material that there is hostility by the general public to members of religious minorities and that there is a fatwa against apostates in general. There are obviously people with strong views about how a person born into Islam should behave and the Jordanian authorities as I have found are intent on reinforcing compliance to Islamic practices through their laws. A real risk may be as low as a one in ten chance, although as Dyson JSC says in HJ (Iran) and HJ(Cameroon) v SSHD [2010] UKSC 31 this will depend on the severity and the seriousness of the treatment he will be subject to. I find that there is a real risk that a member

of the public (ie a colleague or a member of his community) would denounce the appellant to a Sharia Court. I find that if his family were to discover that he had returned, that there is a strong likelihood that his father or other male family member would denounce him because of their very strong objections to his conversion. I find therefore that there is a reasonably likelihood that the appellant would face the prospect of being prosecuted by a Sharia court, which would involve him being declared an apostate, losing his civil rights to vote, losing his inheritance rights etc. (He is not at present married, nor does he have any children and did not give evidence of his intentions in this respect.) This is state sponsored discrimination. I also find that this would significantly affect his ability to find employment. He potentially could face criminal charges although this is less likely in view of the lack of background evidence.

71. I also find that as a convert there is a real risk that he will face ostracism, threats and potentially violence from his local community. I find that the authorities are likely to be complicit in any such treatment he receives and will not offer him protection because of his status of apostate.

Definition of persecution

72. For claims made on or after 28 June 2022, “persecution” is now defined in statute at s31 Nationality and Borders Act 2022 (“NABA”) as:

Article 1(A)(2): persecution

(1) For the purposes of Article 1(A)(2) of the Refugee Convention, persecution can be committed by any of the following (referred to in this Part as “actors of persecution”)—

(a) the State,

(b) any party or organisation controlling the State or a substantial part of the territory of the State, or

(c) any non-State actor, if it can be demonstrated that the actors mentioned in paragraphs (a) and (b), including any international organisation, are unable or unwilling to provide reasonable protection against persecution.

(2) For the purposes of that Article, the persecution must be—

(a) sufficiently serious by its nature or repetition as to constitute a severe violation of a basic human right, in particular a right from which derogation cannot be made under Article 15 of the Human Rights Convention, or

(b) an accumulation of various measures, including a violation of a human right, which is sufficiently severe as to affect an individual in a similar manner as specified in paragraph (a).

(3) The persecution may, for example, take the form of—

(a) an act of physical or mental violence, including an act of sexual violence;

(b) a legal, administrative, police or judicial measure which in itself is discriminatory or which is implemented in a discriminatory manner;

(c) prosecution or punishment which is disproportionate or discriminatory;

(d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;

73. However the appellant's claim for asylum was made on 23 July 2019 so s31 of the NABA does not apply to his claim. The Refugee Convention does not define persecution and there is no universally accepted definition. Other discriminatory violations of human rights may amount to persecution. In R v Immigration Appeal Tribunal ex parte Jonah [1985] Imm AR 7, Nolan J ruled that the word must be given its ordinary dictionary definition to "pursue with malignancy or injurious action, especially to oppress for holding a heretical opinion or belief". The unjustified derogation or curtailment of freedom of religion or expression will amount to persecution. The denial of goals for social, economic or cultural development such to a right to a livelihood could amount to persecution if systematic and discriminatory. (Gashi v SSHD [1997] INLR 96). I have also had regard to the principles in BF (Tirana- gay men) Albania CG [2019] UKUT 00093 (IAC) and the comments of Laws LJ in Amare v Secretary of State for the Home Department [2005] EWCA Civ 1600, [2006] Imm AR 217 where he said at para 31:

"The Convention is not there to safeguard or protect potentially affected persons from having to live in regimes where pluralist liberal values are less respected, even much less respected, than they are here. It is there to secure international protection to the extent agreed by the contracting states."

74. This approach is reflected in the CPIN on Gender Issues in the asylum claim 10 April 2018

Discrimination based on gender

A discriminatory measure, in itself or **cumulatively with others**, may, depending on the facts of the case, amount to persecution.

This would be the case, for example, if the discrimination **has consequences of a substantially prejudicial nature for the person concerned** such as but not limited to:

- **serious legal, cultural or social restrictions on rights to earn a livelihood**
- **serious legal, cultural or social restrictions on rights to private and family life**
- **restrictions on political enfranchisement**
- **the ability to practise or choose not to practise a religion**
- restrictions on access to public places
- **the ability to access normally available** educational, **legal**, welfare and health care **provision**

75. I do not find that the appellant will be detained, tortured or killed for reasons of his religion. There is no breach of an absolute non-derogable right.

76. I turn to consider whether the treatment I have found he will face, is an accumulation of various measure including a violation of a human right which is sufficiently serious to amount to persecution.
77. The agents of persecution in this matter are both the state in the sense of the Sharia courts which form part of the state legal apparatus, as well as non-state agents comprising of potential employers, neighbours and other individuals in the community.
78. I find that any such treatment he does receive would be as a result of the appellant's conversion to a different faith and therefore for reasons of religion.
79. I find that the denial of his civil and political rights, his inability to practice his religion in public, the limitations on his inability to work, coupled with the ostracism and threats he is likely to receive from his local community, amount cumulatively to a sufficiently serious systematic and discriminatory derogation of his core human rights including his Article 8 ECHR right to respect for private and family life and Article 9 right to freedom of thought conscience and religion, (combined with Article 14 prohibition of discrimination) and thus amount to persecution. I am therefore satisfied that the appellant has a well-founded fear of persecution for a convention reason, that is, that there is real risk of serious harm if he is returned to Jordan.
80. I also state briefly that the treatment that the appellant is reasonably likely to face in Jordan as an apostate, also amounts to "very significant obstacles" to integration because he will as a result of his apostacy not be enough of an insider to have a capacity to participate in society, have a reasonable opportunity to be accepted there or operate on a day-to-day basis. I also allow the appeal on this basis pursuant to Article 8 ECHR because I am satisfied that the appellant can meet the immigration rules in respect of private life considerations and therefore that there is no public interest in his removal.

Notice of Decision

1. The appeal is remade and allowed pursuant to the Refugee Convention
2. The appeal is remade and allowed pursuant to Article 8 ECHR

R J Owens

Judge of the Upper Tribunal
Immigration and Asylum Chamber

18 July 2024

Annex A



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001647

First-tier Tribunal No: PA/50270/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

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Before

DEPUTY UPPER TRIBUNAL JUDGE L MURRAY

Between

AMAAK
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Joseph, Counsel

For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

Heard at Cardiff Civil Justice Centre on 18 January 2024

DECISION AND REASONS

Order Regarding Anonymity

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

Anonymity was granted by the First-tier Tribunal. I have not been asked to rescind that order. I have considered the principles of open justice. I am of the view that it is in the interests of justice that order continues. 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.

Introduction

1. The Appellant is a national of Jordan. He claimed asylum in the UK on the grounds that he had a well-founded fear of persecution in on the basis of having converted to the Baha'i faith. He claimed that his family did not accept his conversion. His appeal against the Respondent's decision dated 8 January 2021 refusing his protection claim was dismissed by First-tier Tribunal Judge Lester in a decision uploaded on 1 February 2022.
2. Permission to appeal was granted on all grounds by Designated Judge Shaerf on 29 March 2022.
3. The matter came before me to determine whether the First-tier Tribunal (FTT) had erred in law, and if so whether any such error was material such that the decision should be set aside.

Error of Law - Grounds of Appeal

4. The grounds of appeal assert that the FTT applied too high a standard of proof; allowed the Respondent to speculate about the basis on which the Appellant was able to obtain his visa for the UK when the Respondent did not produce the visa application form; erred in finding that the Appellant had knowledge of the contents of the visa application form; made findings in relations to matters not put to the Appellant and failed to take account of the Appellant's explanations. The grounds further assert that the Judge failed to consider the difference between a person born into the Baha'i faith (or converts from another religion) as opposed to a convert from Islam. It is argued that the Judge's approach to the expert evidence is perverse and having accepted the evidence that a Fatwa had been issued declaring all Baha'i as apostates, the FTT failed to recognise that where the Jordanian penal code did not make a ruling Sharia law applied. It is argued that the Judge erred in failing to reason why Baha'i would be treated more favourably than a Christian convert.

The Rule 24 Response

5. The Respondent submits that the FTT Judge directed himself appropriately and reached conclusions that were open to him. The FTT gave adequate reasons for finding that the Appellant would be able to continue to practise his Baha'i faith on return and that his claim was that he feared the family and not the state. The Judge gave adequate reasons for rejecting his account of having experienced problems with his family and being at risk from them on return.

The hearing

6. I raised with Mr Joseph that the grounds in relation to the standard of proof, the FTT's alleged speculation as to the visa application and the procedural irregularity points were not adequately particularised. I asked him to take me to the evidence and paragraphs of the FTT

decision which were said to contain the alleged errors. He conceded that he was not in position to take me through the evidence and that a record of proceedings had not been requested. He submitted that the Judge failed to engage with the background evidence and failed to address the evidence of the risk due to apostasy. The Judge did not address the evidence that it was an offence in Sharia law.

7. Mr Howells submitted that the Judge applied the lower standard of proof and reminded himself of it on a number of occasions before setting out his conclusions. The findings on the visa application were open to the Judge and it was open to him to find that it was unlikely that the Appellant did not realise that the information in the application form was incorrect and only became aware of this in 2021 when the form was adduced. The grounds suffered from a lack of detail in relation to matters not put and it was not readily apparent in the absence of the record of proceedings. Only one example was given in the grounds in relation to the explanations provided by the Appellant that were allegedly not taken into account. The Judge dealt adequately with the risk on return and neither the appeal nor criminal court in Jordan specified a penalty for apostasy and private religious practise was allowed. The Judge was correct that none of the examples given by the expert of action taken against apostates related to Baha'i. The Appellant's case was that he feared his family only. Dr Fatah's report dealt with the risk to converts arising from the Sharia courts for a convert and said that they 'may' be punished. No examples of Baha'i converts being punished were given.

Conclusions - Error of Law

8. Although the grant of permission is not limited, Designated Judge Shaerf concluded that it was arguable that the Judge had not taken appropriate account of the risk to the Appellant on return as a Baha'i. He concluded that it was arguable that the Judge had not taken appropriate account of the difference between the secular justice system in Jordan and the role of Sharia courts over religious matters, that the Appellant was an apostate from Islam which was different in Jordan from being a convert from Christianity.
9. I expressed my view at the hearing that the grounds in paragraphs 1 to 7 are inadequately particularised and Mr Joseph was unable to take me to the specific parts of the decision to which they relate or the evidence that was said not to have been taken into account.
10. In relation to assertion in paragraph 1 of the grounds that there is a misapplication of the standard of proof, this is unparticularised and I find that the decision discloses no misdirection.
11. Paragraph 2 of the grounds asserts that at paragraphs 38 and 39 of the decision the Judge 'allows the Respondent to speculate on the basis for which the Appellant was able to obtain his visa for the UK'. Paragraph 3

alleges an error at paragraph 40 and also relates to the visa application and asserts that the Appellant could not have knowledge of its contents as it was in English and served after the bundle.

12. The FTT sets out the Appellant's evidence about his visa application at paragraph 37 of the decision. I find that it was open to the Judge to find that it was unlikely that the embassy staff would have granted a visa to the Appellant when the information he provided to them in interview differed to his visa application form. In view of the fact that the Appellant admitted that he told the embassy staff that he had not been to Italy when he informed them in his visa application form that he had visited there, there was no unfairness in making an adverse credibility finding in the absence of any interview record. Further, despite the fact that the grounds assert that the Judge 'allowed the Respondent to speculate' in submissions, there is nothing to indicate that any objection was made to the Respondent's submissions at the hearing.
13. At paragraph 4 of the grounds relates to section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004. It is asserted in the grounds that at paragraph 41 of the decision the Judge alleges that the Appellant failed to answer when he had in fact provided an explanation why he did not claim asylum earlier.
14. Section 8 requires the Tribunal to take account, as damaging the claimant's credibility, of any behaviour to which the section applies. The Respondent concluded in the refusal letter that section 8 (5) applied because the Appellant had failed to make an asylum claim before being notified of an immigration decision. The FTT was required to determine whether the Appellant had acted in the way claimed, whether the behaviour fell within section 8 and how much weight to attach to the behaviour damaging the Appellant's credibility (JT (Cameroon) [2008] EWCA Civ 878, [2009] 2 All E.R. 1213).
15. The FTT did not find that the Appellant "failed to answer", as asserted in grounds, but found that the Appellant did not provide any "real explanation" as to why he did not claim asylum on arrival. It does not appear to be in dispute that the Appellant failed to make an asylum claim before being noticed of an immigration decision. The Judge clearly took account of his explanation and it was open to the Judge to find on the evidence that the Appellant's explanation for not claiming asylum on arrival was not clear and detracted from his credibility.
16. It is asserted that from paragraph 43 to 61 the Judge raises a number of issues and that these were not put to the Appellant and he had provided explanations for a number of those points. The record of proceedings was not before me and I have not been directed to passages in the Appellant's evidence which the FTT should have, and failed to consider. I find that this ground is not made out.

17. The final ground asserts that the Judge's approach to the expert report is perverse. The FTT notes that the Baha'i community numbers 1000 in Jordan and that Dr Fatah states that they are not an officially recognized religion by the state and significant difficulties arise as a result. He further notes that Dr Fatah provides a number of examples of people looked upon as apostates and the treatment they received. He notes that none of the examples relate to Bahai. At paragraphs 70 and 71 he states:

"70. Dr Fatah at paragraph 116 notes: While there is limited information available in the public domain regarding social stigma against the Bahai community in Jordan, it is plausible to assume that they face some level of stigma and discrimination from the Muslim majority community. It should be noted that Jordan's Higher Islamic Committee issued a fatwa deeming all Bahais to be apostates.

71. In my view this sums up the position facing the Tribunal. There is very limited information available and in the circumstances Dr Fatah has applied personal knowledge and expertise to reach conclusions. However in the absence of information these conclusions are in my view not necessarily definitive. I do however accept the point about a fatwa having been issued which declares all Bahai to be apostates. However this must also be weighed against the USSD report which noted that neither the Penal Code nor the Criminal Code specifies a penalty of for apostasy and also that there is no express statutory prohibition on apostasy.

72. Accordingly applying the lower standard and bearing in mind all that I have set out above I find that the Appellant would be able to practise his faith on return to Jordan."

18. The Appellant's case was, as the Judge correctly apprehended, that he feared persecution from his family and not the state. The Appellant confirmed this during oral evidence as recorded at paragraph 62 of the FTT decision. However, it was also the Appellant's case as set out in his appeal skeleton argument (ASA) that in matters of apostasy Sharia law takes precedence and that the Appellant would be at risk of persecution for being an apostate. It is argued that that risk emanates from the authorities in Jordan.
19. The grounds and the grant of permission relate to the application of Sharia law where the Jordanian penal code did not make a ruling. Dr Fatah sets out the treatment by the authorities of converts at paragraph 7.1 of the report. He states that whilst there are not penalties under civil law for converting, persons converting from Islam may be punished by Sharia courts who deem converts as apostates. At paragraph 87 he states that:

"If a convert is accused of apostasy by any member of the community and tried in a Sharia court, they may be punished by being deemed officially as having no religion. Under Jordanian law, this would strip a person of their civil rights including the ability to obtain employment, and would legally sever their familial relationships."

20. He further states at paragraph 88 and 89 that a court conviction can result in imprisonment and fines. After a person has been convicted of apostasy, it is possible for the Sharia court to annul their marriage, transfer child custody to a Muslim family member or declare the child a ward of state. The court may also take away the individual's property rights and give them to a Muslim family member. He sets out that converts and apostates may be often imprisoned under other criminal charges and that blasphemy is also punishable under the Jordanian Penal Code. In his conclusion at paragraph 7.3 he states that if the Appellant is convicted of apostasy by a Sharia court, he could be deemed as having no religion and stripped of his civil rights impacting on his ability to obtain employment and would legally sever his familial relationships. It is possible that he also may be imprisoned under other criminal charges such as undermining public security and national unity or contempt of religion.
21. I find the FTT did not engage with this evidence and does not consider the effect of Sharia law on the Appellant's conversion to Bahaimism. The Appellant's conversion was accepted by the Respondent. It was therefore a plank of the Appellant's argument that was raised in the ASA, considered by the expert, and required adjudication by the FTT. I find that this error was material as the risk to the Appellant of punishment from the Sharia courts as an apostate was an issue that was not affected by the adverse credibility findings.
22. I have considered whether to remit or retain the case within the Upper Tribunal with regard to the recent decisions of Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC) and AEB v Secretary of State for the Home Department [2022] EWCA Civ 1512. The parties agreed that if the credibility findings were found not to contain a material error of law then the decision should be remade in the Upper Tribunal. I have concluded that the credibility findings should be preserved and the decision will be remade in the Upper Tribunal.
23. The credibility findings from paragraph 37 to 63 are preserved. The Upper Tribunal will consider the risk to the Appellant as an apostate at the re-hearing of the appeal.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law.

The decision of the First-tier Tribunal is set aside.

The decision will be remade in the Upper Tribunal.

L Murray

Deputy Upper Tribunal Judge
Immigration and Asylum Chamber

15 February 2024