



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

**Case Numbers: UI-2024-003561**  
**UI-2024-003619**

On appeal from: PA/52888/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 18 November 2024**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**B J**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Chengetai Mupara of Counsel, instructed by Duncan Lewis

solicitors

For the Respondent: Ms Siobhan Lecointe, a Senior Home Office Presenting Officer

**Heard at Field House on 12 November 2024**

**Order Regarding Anonymity**

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant has been granted anonymity, and is to be referred to in these proceedings by the initials B J. 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**

### **Introduction**

1. The appellant challenges the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision on 24 May 2021 to refuse him international protection pursuant to the Refugee Convention or leave to remain on human rights grounds. He is a citizen of Tunisia and was born and raised a Muslim.
2. **Mode of hearing.** The hearing today took place face to face.
3. For the reasons set out in this decision, I have come to the conclusion that this appeal falls to be dismissed.

### **Procedural matters**

4. **Vulnerable appellant.** The appellant is a vulnerable person by reason of his mental health difficulties. He is entitled to be treated appropriately, in accordance with the Joint Presidential Guidance No 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance. He was not present today so no adjustment was required.
5. **Non-compliance with Electronic Bundle Guidance.** I record that the appellant's representatives failed to comply properly with the Directions issued by the Upper Tribunal following the grant of permission to appeal. The Directions issued made it clear that:
  - (a) No later than **10 working days** before the hearing of the appeal, the appellant was required to provide to the Upper Tribunal **and the respondent** a composite electronic bundle complying with the Guidance on the Format of Electronic Bundles in the Upper Tribunal (IAC); and that
  - (b) The composite bundle must contain identified documents in a structured way.
6. The appellant's bundle, while uploaded to CEFile in time, was not served on the respondent, causing an hour's delay today to the hearing while it was emailed to Ms Lecointe and she was given an opportunity to read it. The bundle was 641 pages: Ms Lecointe was able to proceed after having that opportunity.
7. Messrs Duncan Lewis Solicitors are reminded of the need to comply with the directions issued: future non-compliance, absent good reason, is likely to be met with sanctions.

8. **Application to vary grounds.** For the appellant, Mr Mupara sought to renew his application to be heard on grounds 1 and 2 of the grounds of appeal. Having regard to the limitation on the grounds for which permission was granted, made by the First-tier Judge and again on the papers application to the Upper Tribunal, and to Mr Mupara's arguments, I am not minded to enlarge the extent of the present hearing. Mr Mupara was permitted to argue only grounds 3, 4 and 5 of his grounds of appeal.
9. The main basis of the appellant's case is that as a Christian convert from Islam, he would be at risk on return to Tunisia, his country of origin.

## **Background**

10. On 10 December 2014, the appellant applied for entry clearance to come to the UK to study. On 22 January 2014, he was granted a six-month student visa.
11. I note that this visa cannot, as the appellant has alleged, have been obtained to enable him to leave Tunisia once in difficulty: although the appellant's relationship with Nour is said to have begun in December 2013, it was not discovered until June 2014, by which time he had held the student visa for six months already.
12. In 2015, the appellant successfully applied for a Tunisian passport on which to travel.
13. On 10 January 2016, 18 months after the discovery of his relationship with Nour, the appellant entered the UK. His six-month study visa was triggered: it would have expired on 10 July 2016. The appellant took a two-week English language course, then was accepted on the Foundation course at Sussex University, with a view to taking the degree in Computer Science Studies there.
14. The appellant claimed asylum on 21 January 2016, just 10 days after arriving in the UK. He was 17 years old. The basis of his claim was that he had been found to be having a sexual relationship with an underage partner, outside marriage (the Nour claim) and was at risk because of that.
15. On 5 August 2016, the respondent rejected his asylum, humanitarian protection and Article 8 claims, both within and outwith the Immigration Rules HC 395 (as amended). The appellant appealed to the First-tier Tribunal, unsuccessfully. He was appeal rights exhausted on that appeal on 9 June 2017, but did not embark for Tunisia.
16. The appellant then made a number of paragraph 353 further submissions:
  - (i) **On 5 October 2017**, the appellant lodged further submissions, which were refused on 19 January 2018;
  - (ii) **On 3 May 2018**, the appellant again lodged further submissions, which were refused three days later on 6 May 2018;

- (iii) **On 7 September 2018**, four months after the previous refusal, the appellant again made further submissions, which were refused on 1 November 2018; and
- (iv) **On 21 February 2019**, three months later, the appellant made further submissions which were refused on 28 March 2019.

The content of these submissions is not known, as none of them are included in the bundle before the First-tier Tribunal and me, nor are the respondent's replies included.

17. In each case, the appellant did not challenge the respondent's refusal to treat his further submissions as a paragraph 353 fresh claim and no right of appeal was given. The respondent's refusals, on whatever basis they were made, stand unchallenged by judicial review.

### **November 2019 submission**

18. On 13 November 2019, eight months after the fourth refusal, the appellant lodged a fifth set of paragraph 353 further submissions which were refused on 24 May 2021, with an in country right of appeal. That is the decision which is the subject of this appeal.
19. The appellant used a further submissions form, which he completed himself, stating that he was at risk because he had converted to Christianity and also that he suffered from poor mental health.
20. The application was accompanied by a letter dated 7 December 2023 from the Baobab Centre for Young Survivors in Exile (Baobab) which said that they had been assisting him since December 2019.
21. The appellant's account was that he had been arrested and detained in September 2014 and October 2014, but that the Tunisian government had agreed to sponsor his computer studies in 2016, although that sponsorship was later withdrawn.
22. On 19 January 2016, he had heard of a visit to his family home with an arrest warrant. The appellant did not know what the warrant was about, but he had the warrant with him in the UK. He thought he might have broken his bail conditions imposed in 2014. The Baobab letter:
- (i) mentioned the appellant's previous experiences regarding the Nour claim, domestic violence at the hands of his father, and ill treatment by the police;
  - (ii) referred to the appellant's conversion to Christianity at St Chad's Church in Chadwell Heath where 'he was some while ago baptised' and his family's rejection of him of that reason; and
  - (iii) set out the appellant's mental health problems. The appellant was being treated at Baobab for post-traumatic stress disorder and depression.

### **Refusal letter**

23. On 24 May 2021, the respondent in her refusal letter summarised the appellant's claim as relating to his conversion to Christianity, that a warrant had been issued for his arrest as an apostate, and that he was being treated in the UK for depression and post-traumatic stress disorder. She did not find his claims to be credible and refused them.
24. The appellant appealed to the First-tier Tribunal.

### **First-tier Tribunal decisions**

25. It was common ground that the 2016 First-tier Tribunal decision was the *Devaseelan* starting point for consideration of the 2024 appeal.

### **The 2016 decision**

26. On 15 December 2016, First-tier Judge Goodrich dismissed the appeal. The appellant was represented by Counsel at that hearing. The respondent was also represented.
27. The appellant's account was that he and his parents had received threats in June and October 2014. There had been no further threats before the appellant left for the UK in 2016. The appellant produced a document requiring him to attend the Forensic Police Squad on 17 October 2014. He did attend on that date and was released without charge.
28. The appellant claimed that the police had raided his family home on 19 January 2016 and had another arrest warrant. They claimed that he had broken his bail conditions. He had not seen or contacted Nour since October 2014. The January 2016 warrant was not produced. There was a DropBox account with photographs of the appellant and Nour in compromising circumstances. Some were also available on his partner's private Facebook page.
29. The First-tier Judge found that the appellant had no individual profile which would make him of significant adverse interest on return to Tunisia. In fact, even having regard to his young age (he was still a minor), the Judge found that the appellant had no subjective fear at all, still less one which was objectively well-founded and met the Refugee Convention standard for persecution and/or the Article 3 ECHR standard of serious harm.
30. The First-tier Judge found the entire claim to be a fabrication and the appellant not to be a credible historian.
31. The appellant's challenge to that decision was unsuccessful.

### **The 2024 decision**

32. The appellant was represented in the First-tier Tribunal by Mr Mupara, who appears today. There was a skeleton argument, which set out the background and identified the issues as follows:

**“Protection grounds:**

- (1) Is there a basis for departing from the previous decision and reasons pursuant to *Devaseelan* [2002] UKIAT 00702?
- (2) Is it reasonably likely that the appellant would face a reasonable likelihood of risk on account of his membership of a particular social group<sup>1</sup>?
- (3) Is the appellant a Christian convert?
- (4) Would the appellant face a real risk of persecution on account of his religion upon return to Tunisia?
- (5) Is there sufficient state protection?
- (6) Is internal relocation a viable alternative?

**Human rights grounds:**

- (7) Is the decision disproportionate?”

33. The First-tier Judge dismissed the appeal principally because she also found the appellant’s account to lack credibility. She treated the appellant as a vulnerable witness, this time by reason of his mental health, as he was now an adult. No adjustments were sought.
34. The Judge directed herself by reference to the relevant guidance in the Equal Treatment Bench Book and at [17] made a proper record of what she said to the appellant about how his evidence would be taken. There is no complaint of that.
35. The First-tier Judge set out the law at length, but correctly, and directed herself that the appellant’s claim was based on his conversion to, and baptism in, the Christian faith at St Chad’s: see [32] in the decision.
36. After setting out the reasoning in the 2016 decision, and the evidence before that Tribunal, the First-tier Judge considered the evidence before her. There were three documents said to be arrest warrants, dated 17 October 2014, 21 June 2017, and an undated one, bearing a case reference from February 2019.
- (1) The 2014 warrant directs the appellant to attend the Forensic Police Squad in his hometown, but does not say why;
  - (2) The 2017 warrant also gives no reasons, nor any statutory authority or criminal charge. It says this:

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<sup>1</sup> In context, the particular social group in question is ‘a man who is perceived to have contravened accepted social mores, a reference to the Nour issue.

“To all the policemen, and land, air and navy crossings police, you are authorised and permitted to arrest this person and bring him immediately before us to the police station of [the appellant’s home town].”

- (3) The 2019 warrant directs the appellant to attend the police centre in his home town voluntarily, failing which he will be forcefully arrested. The reason given is that there are ‘many submitted complaints against you to the security centre in [his home town] with regards to converting to Christianity that is known as apostasy in Islam’.

The First-tier Judge did not place much weight on these documents.

37. The arrest warrant documents are supported by a series of letters from the appellant’s Tunisian lawyer, Mr Faozi Bejaoui.

- (i) An undated letter, written sometime after 21 June 2017, records an account given to Mr Bejaoui by the appellant’s mother, asserted that an arrest warrant was served on the family home on 21 June 2017, and that the appellant risks violation of his human rights by reason of his having a relationship outside marriage with the daughter of a businessman. The appellant was at risk of death and the treatment he would receive would be ‘degrading and humiliating’;
- (ii) On 23 April 2018, Mr Bejaoui wrote describing the response in Tunisia to apostasy. He mentioned no provision of Tunisian law, nor did his letter it really engage with the appellant’s particular circumstances. The letter concluded:

“I know that your family and friends have rejected you and you have been threatened by many people on social media including sheikhs, friends, members of your family, this indicates that living in Tunisia as an apostate means torture, rejection from society and probably your death.”

It is not clear how Mr Bejaoui would have known that, or who was instructing him on this occasion.

- (iii) On 12 April 2019, Mr Bejaoui wrote a letter apparently based on instructions from the appellant. He had been unable to speak to the appellant’s family and friends who refused to talk about the appellant or forgive him for the sin of apostasy. The letter was mainly an exposition of Shari'a law on the question of apostasy. It concluded:

“I managed to get access to some documents on social media that prove you have been threatened by some sheikhs and other people, that makes you vulnerable to rejection from the society, possibly killed or tortured in the case that you return to Tunisia”;

- (iv) On 22 November 2021, in his final letter, Mr Bejaoui set out the history of the appellant in Tunisia in more detail, dealing with the Christian conversion in the following terms:

“And then in the date of 2018, after [he] converted to Christianity and converted from Islam to Christianity, many people sent him scary messages through social networking sites such as ‘we will cut off your head’, ‘we will kill you’ and ‘verses from the Holy Qur’an about murder’ and many citizens filed complaints and police reports age [him] so the police issued a subpoena and arrest warrant against [the appellant] and I obtained a copy of this arrest after continuous communication and persistence for two weeks by the security centre in [the appellant’s home area].”

The First-tier Judge accepted that Mr Bejaoui was a registered lawyer, but placed little weight on the alleged arrest warrants or the contents of these letters.

38. There are also a number of letters from the Reverend Canon Martin Court (Canon Court) at St Chad’s. It is not now disputed that a letter dated 26 November 2018, purporting to be from Canon Court, is an obvious forgery. It is badly spelled and written, and in the wrong font: it says that the appellant has been with St Chad’s since February 2018, and had been baptised on 25 November 2018, the day before the letter.
39. There are two genuine letters from Canon Court, one dated 13 December 2021, giving the date of baptism as 12 August 2018, and one on 20 November 2023, which just says 2018. Both are in rather general terms, and refer to consistent attendance at weekly services, although the appellant’s evidence was that his attendance was mostly, but not entirely, regular. Canon Court was not called and his evidence has not been tested. The baptism certificate has not been produced. The Judge decided to give little weight to this correspondence.
40. A document expert, Dr Hasan Hafidh, gave a report having examined photocopies of the arrest warrants. I have today seen an exchange of emails in which he refused to attend at the Home Office to inspect the original documents. His report notes that while in general the documents look plausible, not seeing them in colour is a disadvantage. He could not say that they were genuine, without seeing the originals, but they were consistent with the sort of document he would expect to see.
41. Overall, to the *Tanveer Ahmed* standard, the First-tier Judge found that the arrest warrant documents were unreliable and placed no weight on them.
42. The Judge did not accept that the appellant had converted to Christianity, though she did accept that he attended church reasonably regularly. She did not consider that he would do so in Tunisia: he would revert to his Muslim origins.
43. The Judge found the asylum claim on the basis of Christian conversion to be fabricated and that the appellant would have no fear on return based on his actual or perceived religion. She noted that it was not unlawful to



be Christian in Tunisia, even by conversion, although it might be difficult and there was societal discrimination and prejudice.

44. The First-tier Judge considered whether the appellant's medical conditions would reach the *Paposhvili/AM (Zimbabwe)* standard and engage Article 3 ECHR. She concluded that they would not.
45. As regards the appellant's Article 8 ECHR rights, the Judge accepted that the appellant had some private life in the UK. Little weight could be given to his private life, which had been built up while he was in the UK precariously (for a brief period) and then unlawfully: see section 117B (4) and (5) of the Nationality, Immigration and Asylum Act 2002 (as amended). The First-tier Judge dismissed the appeal.
46. The appellant appealed to the Upper Tribunal.

### **Permission to appeal**

47. Permission to appeal to the Upper Tribunal was granted by First-tier Judge Elliott on grounds 3, 4 and 5 only. Grounds 1 and 2 asserted that the First-tier Judge had failed to consider the appellant as a member of a particular social group, and ground 2 that it was not open to the Judge to reject the appeal on grounds of plausibility. The appellant did not challenge the Article 3 and 8 conclusions by the Judge, in particular in relation to the appellant's mental health issues.
48. The appellant renewed his appeal on grounds 1 and 2 to the Upper Tribunal but they were again rejected. I am concerned today only with grounds 3- 5:

**Ground 3.** The appellant contends that the First-tier Judge's factual findings in relation to the warrants and to the weight given to Dr Hafidh's documentary expert report. The First-tier Judge had misunderstood the *Devaseelan* approach, which was not one of issue estoppel: see *LD v Secretary of State for the Home Department* [2004] EWCA Civ 804 at [28]-[31].

**Ground 4.** It was not open to the First-tier Tribunal to place the weight she did on the appellant's having forged a letter from his church with an incorrect date of baptism in it, or to find that the conversion claim was a fabrication. The First-tier Judge should have looked for a *Chiver* core which could be found reliable.

**Ground 5.** The First-tier Judge's findings on Article 8 ECHR were infected by his conclusion that the appellant had fabricated the claim. He would not be able to return to his family for support because, as the Judge had accepted, he had suffered domestic violence at his father's hands before coming to the UK. The evidence of the appellant's conversion was publicly available on social media and it was more likely than not that the family had indeed disowned him.

## **Rule 24 Reply**

49. In her Rule 24 Reply, the respondent argued that:

“...3. Alleged errors in respect of the weight a first instance Judge gives to evidence will only be an error in law if the findings were irrational. The focus of the Judge’s evaluation of the arrest warrant documents was broader than that of the expert.

4. The Judge applied the approach approved in *Tanveer Ahmed* in relation to documents. She considered the fact that the appellant was able to remain in Tunisia, without being apprehended or questioned by the police as an indicator of lack of interest in prosecuting any case against the appellant.

5. Against this background, she was entitled to doubt the reliability of an unauthenticated warrant issued some years after the alleged complaint against the appellant.

6. the Judge was entitled to consider the appellant’s submission of a fabricated letter from Revd Court as an indicator that his motives for converting to Christianity were not genuine,”

50. That is the basis on which this appeal came before the Upper Tribunal today.

## **Upper Tribunal**

51. The oral and written submissions at the hearing are a matter of record and need not be set out in full here. I heard lengthy submissions for the appellant from Mr Mupara, and have had regard to the skeleton argument prepared for this appeal by him.

52. Mr Mupara sought to reargue the evidence before the First-tier Judge and to reintroduce the Nour issue, although that was settled in 2016 and not relied upon in the grounds of appeal. Mr Mupara’s submissions today are well summarised in the skeleton argument and were really an attempt to persuade me to take a different view of the evidence and the factual matrix.

53. Ms Lecointe on behalf of the respondent relied on the refusal letter and made brief and cogent submissions.

54. I had access to all of the documents before the First-tier Tribunal and in addition to the email exchange mentioned above.

55. I reserved my decision, which I now give.

## **Discussion**

56. The appellant’s grounds of appeal are in reality an attempt to reargue the First-tier Judge’s findings of fact and credibility. I remind myself that the 2016 Judge found the appellant not to be a credible witness and his

evidence to be unreliable. That was the *Devaseelan* starting point for the assessment of credibility in the present appeal.

57. I do not know, because the documents have not been produced, what were the reasons advanced in the four earlier paragraph 353 applications made and rejected between 2017 and 2019. Nor do I know why the respondent refused them. The only thing which is clear, is that the appellant did not challenge those decisions. That does not assist him in drawing any bright line between the 2016 appeal and the present decision.
58. The letters from the lawyer are not evidence that the arrest warrants are genuine, and the arrest warrants are very odd documents. There is no reliable evidence that they are genuine nor is any statute or criminal code cited under which the appellant's conversion would be unlawful.
59. The Judge found that the country evidence indicated that Christians, including converts, were not breaking the law, though there might be social difficulties. It is not suggested that she erred in her assessment of the country evidence, and the evidence of Dr Hafidh was properly given very little weight, given the reservations he himself made in his report, and his refusal to examine the original documents.

## Conclusions

60. The First-tier Judge's decision is fully and carefully reasoned. The weight to be given to factual evidence and expert reports is always a matter for the fact-finding Judge, absent perversity, which is not present here. The Judge's reasons given for according the weight she did to the disputed evidence in these proceedings were unarguably open to her on the evidence I have summarised above. I am not seised of the Nour issue: that was disposed of in 2016 and the appellant has been appeal rights exhausted thereon for 8 years now.
61. I remind myself of the narrow circumstances in which a reviewing Tribunal may interfere with findings of fact and credibility by a First-tier Judge who has seen and heard the appellant give evidence, and assessed the documents before her. I have regard to the guidance of the Court of Appeal in *Volpi & Anor v Volpi* [2022] EWCA Civ 464 (05 April 2022) at [2]-[5] in the judgment of Lord Justice Lewison, with whom Lord Justices Males and Snowden agreed. Lewison LJ emphasised that the Upper Tribunal may interfere with findings of fact and credibility only where such a finding is 'plainly wrong' or 'rationally insupportable'.
62. The grounds on which permission was given in this appeal do not reach the high standard set in *Volpi*, and are no more than a vigorous disagreement with conclusions which were unarguably open to the Judge for the reasons given in the decision.
63. It follows that this appeal must fail. The decision of the First-tier Judge is upheld.

**Notice of Decision**

64. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of no error on a point of law

I do not set aside the decision but order that it shall stand.

Judith Gleeson

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**Dated: 12 November 2024**