



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

Case No: UI-2022-006257

First-tier Tribunal No: PA/51688/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 6 Aug 2023**

**Before**

**UPPER TRIBUNAL JUDGE PICKUP**

**Between**

**NS**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr K Wood, IAS Legal Representative

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**Heard by remote video at Field House on 24 July 2023**

**Order Regarding Anonymity**

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

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

**DECISION AND REASONS**

1. The appellant, a citizen of Lebanon, has been granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Galloway) promulgated 30.11.22 dismissing his appeal against the respondent's decision of

13.4.22 refusing his protection claim but granted permission to stay in the UK for 30 months on article 8 ECHR family life grounds.

2. Rather late in the proceedings, Mr Wood served further background material with an application under Rule 15 (2A) to admit evidence specifically addressing poor conditions and mistreatment in military prisons. Mr Wood explained at the hearing before me that this material was only relevant if the Tribunal found an error of law. Ms Everett had not seen the latest evidence but for the reasons explained below, it was not necessary for that material to be considered.
3. I heard helpful submissions from both legal representatives, following which I found an error of law in the making of the decision of the First-tier Tribunal, set that decision aside and remade the decision by allowing the appeal on article 3 ECHR grounds. I now set out my full reasoning for that course of action.
4. The key issue before the First-tier Tribunal was whether the appellant, as a deserter from the Lebanese Military who was prosecuted in absentia and sentenced to a term of nine months' imprisonment for desertion, would be at real risk of harm contrary to article 3 ECHR when detained and imprisoned on his return to Lebanon.
5. The First-tier Tribunal accepted, for the unchallenged reasons set out in the impugned decision, that the appellant was a member of the Lebanese Military when he fled Lebanon and that he was prosecuted in absentia by the Lebanese Military Court, sentenced to nine months' imprisonment, and would be required to serve that sentence on return to Lebanon.
6. However, for the reasons set out from [7] onwards of the decision, the First-tier Tribunal did not accept that there would be any real risk of serious harm on serving such a sentence within a *military* prison.
7. The judge's reasoning first distinguished the US State Department background material which stated that violent abuse sometimes occurs during *preliminary investigations* at police stations or military installations on the basis that having already been investigated and sentenced, he was already beyond the stage of preliminary investigation. The judge also discounted references to the death penalty and issues as to fair trials, as the appellant would not face trial or the death penalty, only service of the term of imprisonment imposed in absentia.
8. The second and more significant reason relied on was that, according to the judge, all other sources cited in the Key Passage Index addressed the conditions of detention in general terms and did not consider military prisons specifically. The judge noted the concerns about the physical conditions in "*most Lebanese prisons*" but stated, "*I am not persuaded -without more- that these concerns apply to military prisons. The appellant has provided no background evidence to demonstrate any such concerns/risk within the military prison context.*" In consequence, at [7(vi)] of the decision, the judge concluded, "*I am not persuaded (even to the lower standard of proof) that there is any real risk of harm to the appellant on return to Lebanon. If returned, he would be required to serve a prison sentence for the offence he has committed.*" For that reason, the appeal was dismissed under article 3 ECHR.
9. In granting permission, the judge of the First-tier Tribunal considered it arguable that "*most Lebanese prisons*" is apt to include the "*military prison context*" and arguable that in the circumstances an irrational finding had been made.
10. As Mr Wood accepted, the background material relied on did not specifically address military detention or military prison conditions. However, as Mr Everett conceded there was no proper basis in the objective evidence put before the First-

tier Tribunal to distinguish the conditions in military prison from other Lebanese prisons. The distinction drawn by the First-tier Tribunal Judge cannot be objectively justified. Put another way, the judge was not in possession of any evidence that suggested that military prisoners were treated any differently, better or worse, than those in other Lebanese prisons. Ms Everett accepted the logical conclusion that on that basis and the unchallenged other findings of fact by the First-tier Tribunal, including the judge's acceptance of poor prison conditions generally, there was a material error of law.

11. It follows for the reasons outlined above the decision of the First-tier Tribunal must be set aside and remade. In doing so, I first preserve all positive findings of fact other than that which purported to distinguish military prison from other Lebanese prisons.
12. Whilst I had looked briefly at Mr Wood's Rule 15 (2A) material, it was in fact unnecessary to consider it or allow time for Ms Everett to consider it. I do not grant permission for that evidence to be adduced. I am satisfied that on the evidence that was before the First-tier Tribunal and in the light of the preserved findings of fact there was no basis upon which to distinguish military prison conditions from those in Lebanese prisons generally. It is clear from the First-tier Tribunal findings and the background evidence that conditions and mistreatment in Lebanese prisons may well infringe the protection under article 3 ECHR. Ms Everett did not seek to argue otherwise and once the error of law had been found did not oppose the appellant's appeal. In the circumstance, the appeal should be allowed on article 3 grounds.

### **Notice of Decision**

The decision of the First-tier Tribunal is flawed for material error of law and is set aside.

The decision in the appeal is remade by allowing the appeal on article 3 ECHR grounds.

I make no order for costs.

DMW Pickup

**DMW Pickup**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**24 July 2023**