



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-006429

First-tier Tribunal No: PA/00326/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 20 October 2023

Before

JUDGE M CANAVAN
DEPUTY UPPER TRIBUNAL JUDGE M SYMES

Between

AMMG
(Anonymity order made)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Khan
For the Respondent: Ms Kunar

Heard at Field House on 8 August 2023

DECISION AND REASONS

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity, this being an asylum appeal.

1. This is the appeal of AMMG, a citizen of the Palestinian Authority born 8 February 1993, against the decision of the First-tier Tribunal of 23 September 2022, itself brought against the Respondent's refusal of his asylum claim on 24 March 2022.

Summary of asylum claim

2. To summarise the Appellant's asylum claim, he was born and raised in Gaza where he lived with his parents and 4 brothers and 2 sisters, and was a field worker for Fatah in Gaza, raising support in relation to issues such as electricity shortage, high taxes and living costs, organising demonstrations and supporting the people during celebration days. He was detained and tortured on numerous occasions. He was detained and tortured by Hamas on 15-20 occasions from 2015 onwards; on at least one occasion he was attacked by assailants on motorbikes, requiring eight stitches for the injuries he sustained. On some occasions the terms of his release included the requirement that he inform on his neighbours or on the movements of particular individuals. He left for Egypt in mid-2018 and Hamas operatives had since visited his family home on around four occasions, questioning his family; following one of those visits he learned he had been sentenced in absentia in November 2019 to five years' imprisonment and a fine of 5000 Jordan Dinar. He feared kidnap, mistreatment or worse at the hands of Hamas on a return. He provided a series of letters variously stating him to be a leader and cadre of the Fatah movement in the Gaza Strip, a member of the district command and one of the leaders of the Fatah Youth Movement, all dated from 2019.

The First-tier Tribunal's findings

3. The First-tier Tribunal having heard oral evidence concluded
 - (a) The letters were unreliable as the roles they attributed to him were inconsistent with his own account and there was no adequate explanation for them having been written in 2019 yet received by him only in 2022.
 - (b) There was nothing implausible in his explanation that some discrepancies between his interview answers arose in the context of having recently arrived from a Channel crossing in a small boat when he was cold, tired and in pain. His evidence of Fatah membership was credible, bearing in mind that it would be unsurprising if he was unable to recall the number of demonstrations he had attended.
 - (c) However, details of his account of motorbike attacks lacked plausibility given he could not recall how many times it had happened and nor could he recall when he last received a summons; his account of detainees being transported by Hamas operatives using false names on Honda buses without registration plates and with dark tinted windows was speculative; and his account of being interrogated in a mosque was vague. The court document he produced referred to proceedings in May rather than

November 2019. None of this was explicable absent a diagnosis of mental health problems affecting his memory.

- (d) He had been able to leave Palestine having obtained a passport and exit visa, which, given the country evidence that Hamas controlled entry and exit to Gaza, was inconsistent with him being of interest to them, as was the ease with which he was repeatedly released from detention. Additionally he had failed to claim asylum in France, a safe country.
- (e) Accordingly his appeal on asylum grounds failed. As to Humanitarian Protection, HS Palestinian Territories CG [2011] UKUT 124 (IAC) had concluded that a person will be generally able “to cater for their most basic needs such as food, hygiene and shelter”, and, as indicated by the Respondent’s CPIN report, thus not generally face a real risk of a breach of Article 3. The Judge accepted that the family home had been destroyed, which would be traumatic for the Appellant and his family, but noted that his parents and adult siblings lived with a neighbour and obtained charitable support, whilst one of his brothers worked as an electrician, showing they had a network of support in Gaza. Given the ceasefire was reported as holding as at August 2022, the Appellant did not face a real risk of inhuman and degrading treatment or of indiscriminate violence from an armed conflict.

Grounds of appeal to the Upper Tribunal, permission grant

- 4. Grounds of appeal asserted that the First-tier Tribunal erred in law:
 - (a) Re asylum, failing to take account of the Appellant's asserted memory problems notwithstanding that the Appellant had provided a reasonably detailed and plausible explanation of aspects of his account, such as the manner by which detainees were transported; rejecting the Appellant's assertion that only Hamas members were able to drive motorbikes in Gaza without identifying any country evidence contra-indicating the plausibility of such events; and failing to note the Appellant's evidence that the court document was dated May 2019 because that was the trial date, which he had not attended, which in turn led to his conviction in absentia in November 2019.
 - (b) Re Humanitarian Protection, failing to consider the future risks of the ceasefire ending given the evidence of its fragility in the light of the country evidence which had been referenced in the skeleton argument before the First-tier Tribunal.
- 5. Judge Owens granted permission to appeal for the Upper Tribunal on 29 March 2023 on the basis that it was arguable that the Judge had given inadequate reasons for concluding the Appellant would not have been detained by Hamas given the background evidence of frequent

incidents of arbitrary detention, assault and torture of Fatah members by Hamas; and the reasoning was arguably inadequate in concluding, on the one hand, that his inability to recall the number of demonstrations he had attended was plausible whereas his difficulty in recalling the number of attacks or detention was implausible.

The hearing in the Upper Tribunal

6. At the hearing before us, Mr Khan submitted that significant aspects of the Appellant's witness statement had been overlooked, such as his evidence that once someone was identified as an activist, they were liable to intimidation and detention; the details he had given about being first detained for two days which he spent with his hands tied up in May 2015; and his account that only Hamas members would drive motorbikes or vehicles without registration numbers (though he acknowledged that the country evidence was lacking as to whether the latter proposition was true). The country evidence did however place Fatah activists at risk given the evidence of suppression of public assembly, violent reaction to even small acts of dissent, and the use of the Hamas security apparatus to control the institutions of civil society. As to the armed conflict, the situation was too fragile given the relatively recent destruction of the Appellant's family home to conclude that matters were truly stable.
7. Ms Kunar for the Respondent made a limited concession, explaining that the Secretary of State accepted that the First-tier Tribunal's reasoning regarding the Appellant's inability to recall the number of motorbike attacks upon him was arguably irrational given the acceptance elsewhere that he could not reasonably be expected to recall the number of demonstrations he had attended; furthermore there had been a failure to refer to the country evidence when assessing plausibility. However she maintained that the decision was otherwise sustainable. This was a balanced and well-reasoned decision in which the First-tier Tribunal gave the Appellant credit for the likelihood that he would struggle to precisely recall some aspects of his history, not least because of his difficult journey here, but nevertheless rejected the critical element of his account underlying his claim. That rejection was motivated by multiple reasons. The Judge had also, in the alternative, lawfully assessed the risks the Appellant would face on a return even were his account to be accepted as established.

Decision and reasons

8. We reserved our decision. Having reviewed the evidence with care, we consider that the grounds of appeal are made out. Asylum decisions famously require anxious scrutiny in their determination. Here there are several matters of concern. Firstly it is surprising that the First-tier Tribunal accepted it was unlikely that the Appellant would recall how many demonstrations he attended, yet not on how many occasions he was detained and mistreated. Yet it is an axiom of refugee status

determination that the more traumatic the event, the more likely it is that recollection of it will be impaired. Secondly the Tribunal rejected aspects of the Appellant's evidence without any reference to the background country evidence, which as cited by Mr Khan, supported the proposition that an activist was likely to come to adverse attention given the heavy control exercised over civil society by Hamas and their heavy-handed response to even moderate protest. Thirdly, the Appellant's witness statement at paragraph 16 distinctly stated that he was sentenced in November 2019 having failed to attend a trial in May 2019; that explanation is clearly overlooked in the Judge's conclusions. Whilst one might observe that not every aspect of the reasoning is undermined by these three flaws, it seems to us that sufficient elements are erroneous such as to cast doubt on the overall conclusions.

9. The second ground of appeal addresses the question of Humanitarian Protection. The skeleton argument before the First-tier Tribunal contended that the Appellant's circumstances on return needed to be assessed having regard to a number of distinct humanitarian difficulties: damage to the Appellant's family home in an attack by the Israeli security forces in 2021, and country evidence attesting to a number of difficulties, including extensive periods without electricity, water supplies generally unfit for human consumption, and large-scale food insecurity, all of which had been greatly worsened by the global pandemic. Faced with this submission, the First-tier Tribunal concluded "He will be returning to his own country where a ceasefire continues to hold, where he has the support of his family and neighbours, he can live with his family as they find new accommodation and there is access to food, electricity and the basic necessities of life." We do not consider that this reasoning suffices to engage with the carefully cross-referenced country evidence that had been deployed in the Appellant's favour, particularly bearing in mind his evidence that he had left Gaza in 2018. His family's circumstances were doubtless of relevance to that issue; but only if evaluated in the broader context.
10. It is appropriate to consider the broader legal context vis-à-vis Humanitarian Protection to assist with this appeal's future adjudication.
 - (a) A person seeking international protection is entitled to bring a claim under the Immigration Rules at paragraphs 339C-339CA on the basis that their case evidences substantial grounds for believing they would face a real risk of suffering serious harm. Serious harm for these purposes includes (Rule 339CA):
 - “(iii) torture or inhuman or degrading treatment or punishment of a person in the country of origin; or
 - (iv) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.”

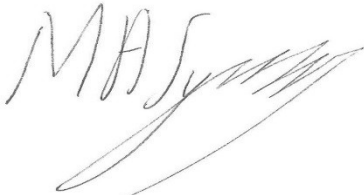
- (b) HS Palestinian Territories CG [2011] UKUT 124 (IAC) evaluated the risks then faced by Palestinians facing a return to the Gaza Strip, concluding that infrastructure was seriously depleted, there were issues of access to electricity and clean water, and imports were limited. The country evidence did not exhibit “a severe deprivation with denial of shelter, food and the most basic necessities of life for the appeal to succeed. It is relevant to note... that to succeed in a claim for protection based on poor socio-economic or dire humanitarian living conditions under... Article 15 of the Qualification Directive or Article 3”.
- (c) The law then moved on. HS Palestinian Territories was promulgated in April 2011. In June 2011 the Strasbourg Court in Sufi & Elmi v the United Kingdom [2011] ECHR 1045 subsequently found, in relation to Article 3 ECHR, that the predominant cause of the humanitarian crisis in southern and central Somalia was due to the current warring parties, with the implication that the high threshold (identified, inter alia, by the then governing authority of N v United Kingdom [2008] ECHR 453) for finding an Article 3 violation in the case of naturally occurring phenomena did not need to be met.
- (d) Given the background to the humanitarian difficulties in Gaza, at some time it will be necessary for Judges hearing asylum appeals to consider whether or not those problems arise as the sequelae of deliberate actions by parties to a long-running conflict. If so, the Article 3 threshold would shift from that contemplated in HS Palestinian Territories to the lower threshold identified in Sufi & Elmi (ie that dire humanitarian conditions falling short of risks to life or the most serious kinds of suffering might suffice). This possibility was recognised by the Court of Appeal in MI (Palestine) [2018] EWCA Civ 1782 on 31 July 2018, remitting an appeal to the Upper Tribunal to consider issues including whether or not the conditions in Gaza “are and were attributable to the direct and indirect actions of the parties to the conflict”. However no subsequent reported decision of the Upper Tribunal addresses this issue.
- (e) As events in the days leading up to promulgation of this decision have sadly shown, the long-standing humanitarian difficulties experienced in Gaza are unresolved. Accordingly upon the remittal the First-tier Tribunal will need to consider not only the Appellant's claim under Rule 339CA(iii) (risks from inhuman and degrading treatment) but also that under Rule 339CA(iv) (risks to civilians in an armed conflict) based on the country data then available. HS Palestinian Territories did not need to grapple with any serious harm arguably emanating from an internal armed conflict because it was accepted by the parties therein §221 that that question was not relevant to the disposition of the appeal.

11. Accordingly we find the First-tier Tribunal contains material errors of law and must be set aside. As the Appellant's credibility will have to be assessed anew, a remittal to the First-tier Tribunal is the appropriate disposal of the appeal.

Decision:

The decision of the First-tier Tribunal contained material errors of law. It is accordingly set it aside.

The appeal is remitted to the First-tier Tribunal for hearing afresh.

A handwritten signature in black ink, appearing to read 'M.A. Symes', with a long, sweeping underline that extends to the left and then curves back under the signature.

Deputy Upper Tribunal Judge Symes
Immigration and Asylum Chamber

10 October 2023