



IAC-FH-AR-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: AA/09917/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 12 January 2016**

**Decision & Reasons Promulgated  
On 27 January 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MZ  
(ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Ms A Fijiwala, Home Office Presenting Officer

For the Respondent: Mr P Haywood of Counsel instructed by Wilson Solicitors LLP

**DECISION AND REASONS**

**Background**

1. This is an appeal against the decision of First-tier Tribunal Judge Liddington promulgated on 19 October 2015 brought with the permission of First-tier Tribunal Judge R A Cox granted on 5 November 2015.
2. Although before me the Secretary of State for the Home Department is the appellant and MZ is the respondent, for the sake of consistency with the

decision of the First-tier Tribunal I shall hereafter refer to MZ as the Appellant and the Secretary of State as the Respondent.

3. The Appellant is a Palestinian national born 24 September 1990 in Lebanon, where he also resided until coming to the United Kingdom. He left the Lebanon, it is said, on 26 May 2014 and then travelled overland via Syria, Turkey, Greece, and France before arriving in the United Kingdom on 14 June 2014, whereupon he claimed asylum.
4. The Appellant's application for asylum was refused for reasons set out in a 'reasons for refusal' letter ('RFRL') of 6 November 2014, and a removal decision was taken in consequence.
5. The Appellant appealed to the First-tier Tribunal. His appeal was allowed by Judge Liddington for the reasons set out in her determination. The Secretary of State seeks to challenge that decision now before the Upper Tribunal.

### **Consideration: Error of Law**

6. In her grounds of appeal in support of the application for permission to appeal the Secretary of State identified two areas of challenge: the first in relation to the reasons of the First-tier Tribunal Judge; and the second alleging procedural impropriety on the part of the Judge in that it was said that the Respondent's representative had been interrupted during the course of the hearing both by the Judge and by the Appellant's representative - the Judge having permitted such interruptions.
7. In granting permission to appeal Judge Cox considered that the first ground of appeal was arguable. In respect of the second ground, it was said that the supporting reasons advanced by the Respondent in respect of procedural impropriety were sparse, and that if this ground was to be relied upon the Respondent would require to file further evidential material.
8. The only material available to the Tribunal in respect of this ground of challenge is the minute of the Presenting Officer, and the only passage relevant in that minute is the one cited in the grounds in respect of interruption. There is no particular detail provided as to when those interruptions took place, or the nature of those interruptions. Ms Fijiwala acknowledges that she is not in a position to file any further materials, and does not seek to amplify that particular ground of appeal before me - although she does not actively seek to withdraw the ground.
9. In such circumstances I indicated that Mr Haywood need not address me in respect of that ground. Insofar as it might be suggested that permission to appeal has been granted on that ground, I reject the ground as not having been adequately supported by evidence or otherwise developed in submissions.

10. However, I have little hesitation in concluding that there was a clear error of law in respect of the adequacy of the First-tier Tribunal Judge's reasons.
11. The decision of the First-tier Tribunal Judge sets out in admirable detail in its early parts the background to the appeal and the evidence that was before the First-tier Tribunal. It references the documentary materials. It also takes time to summarise at some length the Appellant's case. There is also reference to the contents of two experts' reports: a report by Dr Neil Egnall, a clinical psychologist, and a report by Ms Sheri Laizer, a country expert. The Judge also details the contents of the Secretary of State's RFRL, and also sets out the submissions of the Respondent's Presenting Officer and Counsel for the Appellant.
12. In doing so - in rehearsing the evidential material, the nature of the Appellant's case and the submissions - the Judge does not at that stage make any findings: for the main part the decision is a 'setting out' of the evidence and issues that were before her.
13. Then, after paragraph 39 of the decision appears the heading "Determination of the Issues". What then follows is this:
  - "40. I find it reasonably likely that the core of the Appellant's account of the events is credible. Taking the evidence as a whole, I find that he did refuse to fight for Hezbollah in Syria and that, as a consequence, he was threatened with severe reprisals should he not return to the PIF who were at that point affiliated with Hezbollah.
  41. I find it reasonably likely that the appellant's uncle's house was attacked. I note that his version of that attack has changed on occasion from one which resulted only in one broken window to one which lasted for fifteen minutes and riddled the house with bullets. I find it more likely that there was a warning attack on the uncle's house which resulted in minimal damage but which represented the escalation of the threat against the appellant. At that point, it is most likely that PIF/Hezbollah were limiting themselves to threats and intimidation not only to persuade the appellant to return but, perhaps even more likely, to teach a lesson to other disillusioned recruits.
  42. It is reasonably likely that the appellant, although he was a fairly low level recruit, was of interest to PIF as he had been assigned to guard one of their leaders, Sheikh Qassim. In that position, the appellant would have known the sheikh's routines, habits and movements and as such could pose a threat to his security. Based on the evidence taken as a whole the Appellant has shown that there are substantial grounds for believing that he has a well-founded fear of persecution for a Refugee Convention reason and is unable or unwilling to avail himself of the protection of that country. I have given considerable weight to the country expert's report of the inability or unwillingness of the Lebanese authorities to challenge the actions of such groups as the PIF or Hezbollah. There would, effectively, be no protection for the Appellant should he be returned to Lebanon. I am satisfied that there is a real risk that the Appellant would face inhuman or degrading treatment or punishment either at the hands of the PIF or Hezbollah should he be returned to Lebanon. I do not find that it reasonably

likely that he would be able to relocate within Lebanon given the presence of Hezbollah throughout the country.”

14. In my judgement paragraphs 41 and 42 are, in the main part, an assessment of risk premised on the acceptance of the Appellant's account. Accordingly it is paragraph 40 that contains the key finding - that is to say the acceptance of the Appellant's evidence as to the events that had befallen him prior to coming to the United Kingdom.
15. The judge's finding in this regard is, to quote from the passage again, no more than this: *“I find it reasonably likely that the core of the Appellant's account of the events is credible.”*
16. I am unable to detect from that passage - or anything else in the decision - the reason why the Judge concluded that the Appellant was credible. No reason is offered at paragraph 40, or the following paragraphs, or anywhere else in the determination, for that conclusion. It is to be understood that this was in the context of significant issues being raised by the Secretary of State with regard to the Appellant's credibility. Such matters are referred to not only in the RFRL but were also amplified in the Presenting Officer's submissions that are recorded at paragraphs 30-33 of the Judge's determination.
17. Mr Haywood has directed my attention to the well-known decision in **R (Iran) and others v Secretary of State for the Home Department [2005] EWCA Civ 982**, and in particular those passages under Part 4 with regard to perversity, the failure to give reasons, and proportionality. The paragraphs dealing with the failure to give reasons are paragraphs 13-15, and in particular Mr Haywood directs my attention to the quotations therein from the judgment of Lord Justice Griffiths in the case of **Eagle Trust Company Limited and Piggott Brown [1985] 3 AllER 119**. I quote those passages now for completeness:

“[An adjudicator] should give his reasons in sufficient detail to show the [IAT] the principles on which he has acted and the reasons that have led him to his decision. They need not be elaborate. I cannot stress too strongly that there is no duty on [an adjudicator], in giving his reasons, to deal with every argument presented by [an advocate] in support of his case. It is sufficient if what he says shows the parties and, if need be, the [IAT], the basis on which he has acted, and if it be that the [adjudicator] has not dealt with some particular argument but it can be seen that there are grounds on which he would have been entitled to reject it, [the IAT] should assume that he acted on those grounds unless the appellant can point to convincing reasons leading to a contrary conclusion.”

And further,

“[I]f the appellate process is to work satisfactorily, the judgment must enable the [IAT] to understand why the [adjudicator] reached his decision. This does not mean that every factor which weighed with the [adjudicator] in his appraisal of the evidence has to be identified and explained. But the issues the resolution of which were vital to the [adjudicator]'s conclusion should be identified and the manner in which he resolved them explained.

It is not possible to provide a template for this process. It need not involve a lengthy judgment. It does require the [adjudicator] to identify and record those matters which were critical to his decision. If the critical issue was one of fact, it may be enough to say that one witness was preferred to another because the one manifestly had a clearer recollection of the material facts or the other gave answers which demonstrated that his recollection could not be relied upon."

18. I do not consider that the Secretary of State is arguing here about 'reasons for reasons'. In my judgement there is a complete absence of reasoning in respect of the key finding with regard to the Appellant's credibility. The "*issue the resolution of which [was] vital to the adjudicator's conclusion*", whilst identified, lacked any explanation for its resolution.
19. In my judgement simply putting the finding at paragraph 40 in the context of recording the evidence and submissions in the preceding paragraphs does not render it adequately reasoned.
20. I am also troubled by the contents of paragraph 41. The Judge identifies a discrepancy in the Appellant's evidence, which was a matter highlighted in the submissions of the Presenting Officer. The first part of paragraph 41 records that discrepancy in the evidence. In my judgement the second part of paragraph 41 does not do anything by way of resolving that discrepancy, but simply goes on to approach the case as if the event had happened in some way or another, notwithstanding the discrepancy in the Appellant's account of it. It is unclear *why* the Judge was satisfied that the event had occurred.
21. Be that as it may, and in any event, the risk assessment at paragraphs 41 and 42 as I have indicated above, is premised on an acceptance of the Appellant's credibility and claimed history - an acceptance which the Judge has singularly failed to explain.
22. Accordingly in all of the circumstances I find that the reasoning of the First-tier Tribunal Judge is inadequate to an extent that it amounts to an error of law. The reader of the decision is left with no understanding of the basis upon which the First-tier Tribunal Judge resolved the key issue between the parties in respect of the veracity of the Appellant's claimed history.
23. In such circumstances the error of law is material to an extent that the decision of the First-tier Tribunal Judge must be set aside, and the decision in the appeal requires to be remade.

### **Remaking the decision**

24. It is common ground between the representatives that in the circumstances this is an appeal that requires to be reconsidered with a new hearing before the First-tier Tribunal.

25. No specific Directions are required. I did however raise with the representatives a question as to why the focus in the appeal before the First-tier Tribunal had been exclusively in respect of the risk to the Appellant in Lebanon given that he was a national of Palestine and the RFRL had raised the issue of the Appellant availing himself of the protection of the Palestinian authorities: see paragraph 49. It may be that either or both parties - and perhaps in turn the First-tier Tribunal - will wish to give some further consideration to this aspect of the case.

**Notice of Decision**

26. The decision of the First-tier Tribunal contained a material error of law and is set aside.
27. The decision in the appeal is to be remade before the First-tier Tribunal by any judge other than First-tier Tribunal Judge Liddington.

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

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

*The above represents a corrected transcript of an ex tempore decision given at the conclusion of the hearing.*

Signed:

Date: 25 January 2016

**Deputy Upper Tribunal Judge I A Lewis**