Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/05282/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 28 November 2019	**On 16 December 2019**

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

AA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr B Ali, Aman Solicitors Advocates (London) Limited
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Chana promulgated on 1 August 2019 dismissing the appeal of the appellant, a citizen of the Palestinian authority, formerly resident in a refugee camp in Lebanon, against a decision of the respondent dated 23 May 2019 to refuse his application for asylum and humanitarian protection.

Factual background

2. There are four grounds of appeal, but they are best summarised in the succinct way in which Upper Tribunal Judge Martin granted permission to appeal. She said:

> "It is arguable that the decision and reasons is so littered with typographical and grammatical errors that the judge's findings and assessment of the evidence are not clear, such that it cannot be said that anxious scrutiny has been applied to the appeal."

3. At the hearing before me, it was common ground that the decision of Judge Chana was indeed littered with typos, statements which did not make sense and featured reasoning which did not appear to flow logically. The four separate grounds of appeal each amounted to a different facet of the overall thrust of the appellant's case before this Tribunal, namely that the judge cannot be said to have applied anxious scrutiny to her decision. I find that the grounds are made out.

4. It is a fundamental tenet of justice that justice must not only be done but also must manifestly be seen to be done. The stakes for the appellant in these proceedings are high. It is trite law that protection proceedings require the highest standards of procedural compliance, especially from the judge.

5. By way of example, I turn to [20] of the judge's decision. There are some, on the face of it, inconsequential typographical errors which in isolation would of course be unlikely to merit a finding that the decision involved the making of an error of law. However, taken cumulatively with the other errors I have found in the decision, these do acquire a new significance, for example the first sentence states as follows:

> "He is a Sunni Muslim.he joined the AA boost his financial position…"

   Such errors are perpetuated throughout the decision. Although it may seem petty to highlight such errors for the purposes of finding that there had been an error of law, it is unfortunately the case that the regularity of the typos within the judgment means that they acquire a new significance. Such errors can be easy to miss, especially after lengthy and extensive consideration of the same document. However, when combined with other errors, it can give rise to a concern that the requisite degree of anxious scrutiny has not been applied.

6. The next substantive sentence in [20] states that the appellant in his statement claimed that the interpreter was speaking *English* and Arabic, and therefore the submission that he was later to make during the proceedings before Judge Chana concerning difficulties of interpretation was not said to be made out. This is an error because it was at no stage said in the appellant's statement that the interpreter spoke *English*. What he said was that the interpreter was speaking an Egyptian dialect of Arabic, whereas he speaks Levantine dialect of Arabic. The suggestion that the appellant said the interpreter spoke in English is not one which was sustained or can be sustained on the face of the appellant's

statement or any of the other materials in the case. The judge may have confused Egyptian for English in her notes, but it is difficult for me to speculate and resolve any ambiguity against the appellant, especially when taken with the other errors in the decision.

7. Later on in [20], the judge states that the appellant said in answer to a question in interview that the aims of the Ansar Allah group were, "to support has Hezbollahr in war in Syria". It is not clear what that sentence means: the insertion of the seemingly redundant "has" brings an element of confusion to the sentence. As the grounds of appeal note, it is not possible to know accurately what the appellant said from the judge's summary of his evidence in that way. At [21] of the decision, it states:

> "at paragraph 33 to 34 of his witness statement he stated Hezbollah I liked and how does he know this."

As the grounds of appeal contend, that sentence does not make sense, and it is not clear from reading the paragraphs in the decision what the judge meant. Indeed, the grounds of appeal go so far as to say that in the first half of [21] of the determination it is not possible to know what the judge meant or is referring to. There is considerable force in that contention.

8. At [32] the judge appears to bring her own subjective assumptions as to what the going rate would be for work in Syria, without relying on specific evidence. In his asylum interview, the appellant said he was paid $300 monthly to remain in Lebanon. The judge disbelieved that, on the basis she thought it was too low. It is not clear how the judge reached that finding, or the evidence she relied upon to reach it. The appears to have brought her own subjective assumption of what the "going rate" would be for a person in the appellant's circumstances, with no evidential foundation.

9. Judges should be careful before making assumptions concerning inherent likelihood. In Y v Secretary of State for the Home Department [2006] EWCA Civ 1223 at [25] Lord Justice Keane said, speaking of the role of an Adjudicator, that:

> "… he should be cautious before finding an account to be inherently incredible, because there is a considerable risk that he [the judge] will be over influenced by his own views on what is or is not plausible, and those views will have inevitably been influenced by his own background in this country and by the customs and ways of our own society."

The observations of Keene LJ apply to the judge's analysis at [32].

10. In isolation it would not necessarily be the case that any of these errors would merit the decision of the First-tier Tribunal being set aside. However, I return to the opening remarks of this decision. The requirement of anxious scrutiny is of particular importance in protection proceedings. The appellant has the entitlement to know that his decision

has been considered with the utmost care prior to his appeal being dismissed. It is simply not possible to characterise the decision of Judge Chana as having been arrived at with the requisite degree of anxious scrutiny, given the errors which permeate it throughout.

11. On that basis, the decision involved the making of an error of law in that there was a procedural irregularity arising from the lack of anxious scrutiny. The remedy to the defect is for the matter to be remitted to the First-tier Tribunal in its entirety to be heard by any judge other than Judge Chana.

Notice of Decision

This appeal is allowed.

The decision of Judge Chana is set aside.

The matter is remitted to the First-tier Tribunal at Hatton Cross to be heard by any other judge than Judge Chana.

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 their 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.

Signed *Stephen H Smith* Date 12 December 2019

Upper Tribunal Judge Stephen Smith