



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: UI-2021-001359

PA/03301/2020

THE IMMIGRATION ACTS

**Heard at Field House
On the 20 July 2022**

**Decision & Reasons Promulgated
On the 29 September 2022**

Before

**THE HON. MR JUSTICE MORRIS
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE STEPHEN SMITH**

Between

**IMS
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Sonia Ferguson, counsel, instructed by Freemans Solicitors

For the Respondent: Mr S. Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal by IMS (“the Appellant”) against the decision of First-tier Tribunal Judge Singer promulgated on 1 November 2021 (“the FTT Decision”). By the FTT Decision, the judge dismissed the Appellant’s appeal against the decision of the Secretary of State for the Home Department

("SSHD") dated 4 May 20220 refusing his protection and human rights claim ("the SSHD Decision"). Permission to appeal was granted by FTT Judge Davidge on 13 December 2021.

2. Whilst Judge Davidge granted permission limited to one only of the eight grounds of appeal, he made no express direction limiting the grounds which may be argued. Accordingly the Appellant's grounds of appeal before us comprise all eight grounds: see *EH (PTA: limited grounds; Cart JR) Bangladesh* [2021] UKUT 0117 (IAC) and rule 22(2)(b) Tribunal Procedure (Upper Tribunal) Rules 2008.

The Factual Background

3. The Appellant is a national of the Palestinian territories born on 8 July 1996 in Lebanon, where he has been habitually resident. He travelled from Lebanon to Turkey in June 2017, before travelling to Spain and a few days later on to France. He stayed there for a few weeks before travelling to the United Kingdom. On 11 September 2017 he claimed asylum in the UK on the basis that he was a Palestinian refugee from Lebanon who could no longer avail himself of the protection of United Nations Relief and Works Agency for Palestine Refugees ("UNRWA") because he was wanted by Fatah. On that date he had his screening interview.
4. On 1 July 2019 he submitted a witness statement. On 9 July 2019 he had his substantive asylum interview. His claim was refused in the SSHD Decision.

The Claimant's claim

5. As summarised in the SSHD Decision, the Appellant's claim for protection is as follows. The Appellant was born and lived in the El-Buss refugee camp in Lebanon. His family were supported by UNRWA, but he claimed this had stopped. He had joined the Fatah movement and become a soldier in 2016. In that year he was trained at a different camp, being a military base for Fatah. He was trained to carry out a policing role within his own El-Buss camp. In 2017 he got into difficulties with Fatah because he did not want to go to another camp. Having refused to attend the Fatah office, five men came to his house and threatened him and his father. His father had refused to give the men access to him. Then in May 2017 he was attacked by men who he believed to be guards from Fatah. It was a vicious attack and he was beaten up and left with multiple bruises. He alleged that the guards tried to take him away by force. He was saved by the intervention of elders emerging from the mosque. As a result of the attack, he attended hospital. In June 2017 the Appellant's father decided that he should leave the Lebanon because the Fatah movement would not be happy with him. Since he had left, his father had told him that Fatah had been looking for him and demanding money. He claimed that on return to Lebanon he feared that the Fatah movement in the El-Buss camp would want him to fight for them and that if he didn't they might kill him.

The FTT Decision

The SSHD Decision

6. At paragraph 2 of the FTT Decision, the judge summarised the reasons for refusal in the SSHD Decision. It was accepted that the Appellant lived in Lebanon in the El- Buss refugee camp. However because of alleged inconsistencies, his claim to have had problems with Fatah and that he was wanted by Fatah was not accepted. In this context, in particular, paragraph 40 of the SSHD Decision stated as follows:

“You submitted as part of your claim a copy of your Palestinian Liberation Organisation card. This has been considered in line with the case law of Tanveer Ahmed This means that it is for you to show that any documents you rely on to support your case can be relied on. This is not an original document but a copy and therefore has not been given any weight in the furtherance of your claim that you had problems with Fatah. However, even if this evidence is taken at its highest, it merely shows that you were with the Palestinian Liberation Army since 2016. It does not say anything about the problems you claim to have had with Fatah.” (emphasis added)

7. The SSHD decision continued that it was accepted that his family had been in receipt of support from UNRWA, but not that the support had been withdrawn. It was not accepted that the Appellant would be at risk on return to Lebanon because of how he claimed he had exited the country. The country information evidence did not establish that there had been a change in the treatment of Palestinians by the Lebanese government or in the conditions in the camps generally. The Appellant therefore fell to be excluded under article 1D of the Refugee Convention. Moreover he was not entitled to humanitarian protection as there were no substantial grounds for believing that there was a real risk of serious harm on return to Lebanon. The Appellant had failed to demonstrate circumstances amounting to a breach either of Article 2 or Article 3 ECHR. Finally the Appellant did not meet the requirements of paragraph 276 ADE(1)(vi) of the immigration rules nor that there was any breach of Article 8 ECHR.
8. The Appellant appealed against the SSHD Decision, contending that it breached his rights under the Refugee Convention and was contrary to Articles 2, 3 and 8 ECHR.

The evidence before the FTT

9. At paragraph 3, the Judge recited the documentary material placed before him. That evidence included a card in Arabic said to record the Appellant’s membership of the Palestinian Liberation Organisation. We refer to this document as “the ID Card”. It also included an English translation of the ID Card. The document was headed “Palestinian’s Liberation Organisation. The Palestinian National Liberation Army. Financial Management. Lebanon branch”. It bore a picture of the Appellant and stated his name, rank as a “soldier” and a number, and was dated 1 August 2016.
10. At paragraphs 7 to 18, the judge summarised the Appellant’s oral evidence before the FTT. At paragraphs 20 to 37, he set out the relevant legal framework in relation to the Refugee Convention and the ECHR.

The judge's findings of fact

11. The judge then turned to make his findings of fact. At paragraphs 38 and following, the judge made his findings in relation to the protection claim. At paragraphs 39 and 40, he directed himself as to the approach to be adopted to issues of credibility, and, in that regard, at paragraphs 41 and 42, he took account of the Appellant's mental health issues.

12. Then, at paragraph 43, the judge concluded that:

“Evaluating the evidence as a whole, and applying the above principles, I do not find the Appellant to be credible even on the lower standard, regarding the core of his claim”.

The judge then set out at length in 22 subparagraphs ((a) to (v)) over 13 pages his reasons for so concluding. At sub-paragraphs (a) to (c) he cited extracts from CPIN “Lebanon: Palestinians” and, at (d) and (e), other general information and reports about Palestinian refugees and camps in Lebanon, and Fatah. He concluded that, on that country information evidence, it was plausible that there could be adverse consequences and risk of serious harm to a person who opposes recruitment by Fatah or who was recruited and then refuses to serve as ordered. He then turned to the Appellant's own evidence (and in particular about being attacked by Fatah guards) and its credibility. There was no corroborative medical evidence of him having attended hospital as a result of the attack by five men nor of his injuries.

13. In particular, at paragraph 43(m) the judge stated as follows:

“It is relevant that the Appellant has provided what he asserts is corroborative evidence in terms of the photographs which he says are of him undertaking training with Fatah. I accept that the images in the photographs are prima facie consistent with what he claims, and support his case, but they are also consistent with him undertaking these activities with another group of people not necessarily Fatah, (for example he explained that there were a number of different groups in the camp at question 45 of his main interview); and they only give a snapshot of one single period of time. It is relevant that I have not been given the website address from where these images were apparently downloaded. The Appellant asserts that he was given them by friend, but no statement from the friend has been obtained to vouch for this or explain where he (or she) downloaded the images from. The Appellant's face cannot be seen on all of the images, although on some of them I accept he is clearly visible in what could be described as a military style outfit. I must consider this, as with everything, in the round.”
(emphasis added)

14. Critically for this appeal, the judge continued at paragraph 43 (n) as follows:

“It is relevant that at Annex F of the Respondent's bundle there is what is described as a copy of the Appellant's Palestinian Liberation Organisation card, which I find, bears his image, although it is not translated. I observe that the only clear date on the card is the Appellant's year of birth. While it could be consistent with his claim, I observed that there is nothing independent of his evidence before me which explicitly states that he joined Fatah as a fighter or was trained by Fatah as a guard or when; or certainly

nothing that is translated before me to say that. The Respondent made similar points about this document at paragraph 40 of the refusal letter, and in particular pointed out that what was submitted to her was a photocopy not the original. I have considered this piece of evidence in the round.”
(emphasis added)

15. After addressing a range of further reasons at sub-paragraphs (o) to (v) of paragraph 43, the judge concluded at paragraph 44 in the following terms:

“Weighing the evidence as a whole, and having regard to the photographic evidence, I do accept that there is a reasonable degree of likelihood that the Appellant has undertaken some light training with an armed group in Lebanon, however beyond that I do not find him credible with regard to his claim, because of the above credibility issues set out above. I do not accept that he joined Fatah in particular, or that he then subsequently fell out with them (or any other armed group). I do not accept that he was assaulted by Fatah guards as claim, or that he refused to serve with Fatah, and I do not accept that they hunted him at his parents’ house. I do not accept that he is a wanted man by Fatah or any other armed group in Lebanon or is wanted by the authorities there. I therefore do not accept the Appellant’s account. I find, evaluating the evidence as a whole, that he has been receiving assistance and protection from UNRWA and that he would be (and would be entitled to be) in receipt of such assistance and protection were he to return. That protection and assistance has not ceased, I find. The Appellant is not someone who has been displaced from his UNRWA refugee camp through circumstances beyond his control, I find, and he did not leave the area in question, for reasons relating to his personal safety. I do not accept any of his account, even on the lower standard, about the threats made to him or to his family from Fatah. He has not established to the standard of a reasonable degree of likelihood that he would face problems from the authorities or Hezbollah or any other group at the airport or on his way home from the airport. I find that the Appellant has failed to establish that there is a reasonable degree of likelihood that, if he were returned to Lebanon, he would face persecution, ill-treatment or serious harm at the hands of Fatah, or from any other source.”
(emphasis added)

16. At paragraph 45 and 46 the judge concluded that the protection claim failed. In the light of the findings at paragraphs 43 and 44, the Appellant was not eligible for Refugee status or the grant of humanitarian protection. Nor had he established his case under either Article 2 or Article 3 ECHR.
17. Finally at paragraphs 47 to 63, the judge went on to address, and ultimately reject, the Appellant’s Article 8 ECHR claim (both under paragraph 276 ADE and outside the rules). The appeal was dismissed on all grounds.

Country Policy and Information Note: Occupied Palestinian Territories

18. We have considered the following further country information evidence: Home Office Country Policy and Information Note. Occupied Palestinian Territories: Background information, including actors of protection, and internal relocation Version 1.0 December 2018 (“the 2018 CPIN”). It provides inter alia, as follows:

“10.2 Fatah and Hamas

- 10.2.1 The two main political factions in the OPTs are Fatah (the dominant party within the Palestine Liberation Front) and Hamas. Fatah and Hamas are both committed to ending the occupation but have different political agendas. Fatah supports the internationally backed two-state solution; Hamas refuses to recognise the State of Israel.
- 10.2.2 DFAT reported that:
'Fatah (Harakat al-tahrir al-watani al-Filastini-English: Palestinian National Liberation Movement) is a socialist, secular political party that was established by Yasser Arafat in 1959 and was led by him until his death in 2004. The current leader of Fatah, Mahmoud Abbas (Abu Mazen), is also the President of the Palestinian Authority... these dual roles give him considerable control and influence. Fatah has experienced periods of significant internal disunity since Abbas came to power in 2004. Fatah is the largest faction in the PA and Fatah's Central Committee, the party's highest decision-making body, is therefore a significant influence in the PA. The Central Committee is elected by General Conference, the first of which was held in 1963, and the latest (seventh) General Conference was held in 2016, at which President Abbas was re-elected as the Chairman of the Central Committee.'
(emphasis added)

The Grounds of appeal

19. The Appellant puts forward the following eight grounds of appeal :

- (i) In assessing the Appellant's evidence, the judge was wrong to emphasise the primacy of credibility and in particular consistency, taking account of the evidence concerning the Appellant's mental health.
- (ii) The judge took into account an irrelevant consideration, namely whether UNRWA aid had ceased or reduced
- (iii) The judge was wrong to expect the Appellant to have been able to speak of the wider aims and ideology of Fatah.
- (iv) The judge made a number of assumptions about how Fatah would operate, in the circumstances of the attack upon him.
- (v) The judge should have accepted that it was reasonably likely still to be the case that there were logistical barriers to entry back into Lebanon for Palestinians.
- (vi) In saying at paragraph 43(n), that he had not seen a translated copy of the ID Card nor anything that explicitly states that the Appellant joined Fatah as a soldier, the judge overlooked the translated copy in the bundle and thus something which the judge himself said would support the Appellant's account.

- (vii) The judge's assessment of Article 8 and very significant obstacles to integration was based on a fundamental misunderstanding of the Appellant's case, namely that the obstacles arose because of his fear that he would be killed on return.
- (viii) Under Article 1D even if his belief is only genuine and subjective, the Appellant should succeed because Article 1D does not oblige him to remain in the area of UNRWA operations where he genuinely fears for his life.

20. In granting permission, Judge Davidge considered that there is merit in ground (vi) above, but "little to recommend the remaining grounds."

Discussion

21. We address first, ground (vi) – the failure to take account of the translation of the ID Card.

The Parties' arguments

22. Ms Ferguson for the Appellant contends that the judge made a clear and obvious error of fact in stating that there was no translation of the ID Card and that error was material, both because it wholly undermines the analysis in paragraph 43(n) that there was no evidence of the Appellant's membership of Fatah and further because it infects the judge's findings of credibility of the Appellant's entire account. The ID Card clearly evidences membership of Fatah, since Fatah and the Palestinian National Liberation Army there referred to, are one and the same organisation.

23. Mr Whitwell for the SSHD contends that it is clear that the judge had undertaken a careful and detailed consideration of the Appellant's claim. Whilst it is accepted that the judge appears not to have been aware of the translated ID Card, nevertheless the judge did have regard to what was addressed on it via the SSHD Decision. The document was a photocopy and did not provide any information regarding the specific issue about which the Appellant was seeking to claim asylum. The document in and of itself could in no way undermine the significant number of credibility issues (unrelated to the Appellant's role within Fatah) identified and relied upon by the judge. At paragraph 44 of the FTT Decision, the judge was willing to accept that the Appellant had undertaken some light training with an armed group (which can be argued to refer to Fatah or otherwise) but that his claim aside from this was not credible. Thus, the Appellant had been given some credit for having undertaken armed training, but overall his account was not credible regardless of his role. In short, had the judge taken the translated ID Card into account it would not have materially affected the outcome of his ultimate findings and conclusion.

Analysis

24. First, it is common ground that, at paragraph 43(n) the judge made a mistake of fact. There is, and was before him, a translation of the ID Card.

25. Secondly, whilst appeals may only be brought to the Upper Tribunal on the basis of an error of law, not a disagreement of fact, certain findings of fact may amount to an error of law. In particular it is an error of law to make a mistake as to a material fact which can be established by objective and uncontested evidence, where the appellant and/or his advisers were not responsible for the mistake, and where unfairness resulted from the fact that a mistake was made: see *R (Iran) v Secretary of State for the Home Department* [2005] EWCA Civ 982 at §9(vii). In the present case, since the Appellant and his advisers were not responsible for the mistaken overlooking of the translated ID Card, the issue is whether the fact of its existence is material and whether unfairness has resulted.
26. Thirdly, turning to the facts, the Appellant's case was that he fought for Fatah, and that that link provided the connection that would later trigger a chain of events leading to him no longer being able to reside in an UNRWA camp. Significantly the judge accepted, at paragraphs 43(m) and 44, that the Appellant had trained with "an armed group" and that the photos of his training, whilst consistent with his claimed link to Fatah, were also consistent with training with another group, and not Fatah. At paragraph 43(n), he accepted that the ID Card (in Arabic) "could be consistent with" the claimed link to Fatah, but there was no independent evidence of this link. In short, the judge was not satisfied that the Appellant had joined, or been trained by, Fatah; see paragraph 44.
27. However the translation of the ID Card, which was before the judge and which he overlooked, states expressly that the Appellant was a soldier in the "Palestinian National Liberation Army". According to paragraph 10.2.2 of the 2018 CPIN, this is another name for Fatah. (In the course of argument, Mr Whitwell accepted this to be the case: and nothing turns on the slight difference in the title of the organisation (i.e. "Movement" vs "Army").
28. In this way, the Appellant's link to Fatah (critical to his overall case) is established by the very document which the judge accepted could have assisted the Appellant's case but which he erroneously failed to consider. The error undermines the judge's findings both in relation to whether he joined Fatah, and his findings that the training photos do not necessarily support training by Fatah. In our judgment, the combination of the translation of the ID Card and the 2018 CPIN, render the Appellant's claim that he joined Fatah and that he was trained by Fatah credible.
29. The SSHD submits that, even if the Appellant was a member of Fatah, that does not establish the rest of his account that he fell out with Fatah and the events which followed (as maintained at paragraph 40 of the SSHD Decision). However, as clear from paragraph 44, the judge's findings rejecting involvement with Fatah was a key step in his overall credibility findings. Notwithstanding the deference owed to first instance finders of fact, since the judge considered the Appellant's case in the round, we cannot rule out that this error infected the judge's remaining credibility findings, especially since this was an asylum claim. On the judge's express reasoning, possession of a Fatah ID card could have helped the Appellant's

case. Together with the judge's acceptance of training by some group, it would have provided the link with Fatah from which all other contact with Fatah could have been assessed. We cannot, therefore, say with sufficient confidence that the error was immaterial. Rather we find that it was material to the judge's overall findings. In this way, unfairness resulted from the judge's mistake of fact, in light of the potential centrality of the ID Card. (We express no concluded view as to the reliability of the ID Card. That will be a matter for the FTT on remittal).

30. For these reasons, we conclude that ground (vi) succeeds. There was an error of law in the FTT Decision. It is therefore not necessary for us to consider the remaining grounds of appeal. We will maintain the order for anonymity made by the FTT.

Notice of Decision

The appeal is allowed. The decision of Judge Singer in the appeal involved the making of an error of law. It must be set aside and remitted to the First-tier Tribunal with no findings of fact preserved, to be heard by a different judge: see para 7.2(b) of the Practice Statements of the Immigration and Asylum Chambers of the First-tier tribunal and the Upper Tribunal

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
2022

Date 11 August

The Honourable Mr Justice Morris