IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004618

First-tier Tribunal No: PA/50623/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 28th of March 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE WILDING

Between

MAA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms S Ferguson, Counsel, instructed by A2 Solicitors
For the Respondent: Mr N Wain, Senior Home Office Presenting Officer

Heard at Field House on 4 December 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 appeals with permission against the decision of First-tier Tribunal Judge Hoffman ('the Judge') who dismissed his appeal on protection grounds in a decision dated 18 August 2023.

Background

2. The appellant is from the Occupied Palestinian Territories. His claim is summarised in the 2019 determination of Judge Moran at paragraph 8:

> *a) He was born in Jabalia. When he was 12 he moved to Jenin camp in Palestine. He moved there with his family as it was convenient for his father's job. He explained in his oral evidence that he and his family were not refugees and that some people who were not refugees chose to live in Jenin camp as it was cheap. I note that the refusal letter said that he had been granted refugee status by UNRWA but he said this is not the case and that the respondent has wrongly assumed that he was a refugee. He was issued with a Palestinian passport in 2013 as he was planning on going to Mecca but these plans were cancelled when his father became unwell.*
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> *b) He completed his education at school and began university. He was unable to complete university due to his father's illness. This meant that he had to work to provide for the family. He worked in construction, painting and selling vegetables.*
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> *c) He is married but has no children. He separated from his wife and she has subsequently obtained a divorce in his absence.*
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> *d) In 2018 he was arrested three times for being out in breach of a curfew that had been imposed. The curfews are widely publicised in absence and he was aware of them. The curfews are from 8pm until 6 or 8am. He was out past the curfew hours for various reasons including that he was looking for shisha to smoke. He was arrested by Israeli forces. On each occasion he was kept overnight until the curfew ended. During the detention he was verbally abused, pushed and struck with a rifle. He experienced pain but was not injured. Others were also arrested and detained for the same reason. He made it clear that this is not the reason he is claiming asylum and that his fear relates to the Palestinian authorities not the Israelis.*
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> *e) The Palestinian authorities went to his house to arrest him on 10th August 2018 but he was at a friend's house at the time. They spoke to his mother and searched the house. He has been informed that they suspected him of some kind of political involvement. He has never in fact been politically active, nor have any of his family. His mother phoned him at about 2am and told him what happened. She said there were two men and they said that he had to hand himself in or they would get him.*
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> *f) He left Palestine via Jordan where he caught a flight to the UK. In his oral evidence he said that he had to change in Saudi Arabia. He arrived in the UK on 26th August 2018 at Heathrow.*

g) His family continue to reside in Jenin and he is in touch with them. This family includes his mother, three brothers and six sisters. He said in his oral evidence that his brother has been trying get evidence that he is wanted. He said his brother has been told that he is still wanted but that they would not provide any evidence of this. In reality I cannot attach any weight to this. There is no evidence from his brother saying what enquiries he has or has not made and with whom.

h) He has various health problems which he has had since he was in Palestine. In respect of each of them his account is that he was able to receive the necessary treatment in Palestine. He has asthma and a nut/sesame allergy. He said if he does not eat either he is alright [Q8].

3. He arrived in the UK on 26 August 2018 and claimed asylum the same day. His claim was refused. He appealed, and of First-tier Tribunal Judge Moran dismissed his appeal on 13 August 2019. Judge Moran gave the following reasons for rejecting the account:

> *12. I remind myself of the lower standard of proof. I am however satisfied that taken collectively the matters at paragraph 8 above are of such force that they prevent MA establishing the vital part of his case, even to the lower standard. I therefore reject his claim that the Palestinian authorities have been, or are, looking for him as a result of suspected political activity or for any other reason.*
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> *13. I do however accept that it is reasonably likely that he has been detained by Israeli authorities for being out during the hours of a curfew. He has been consistent about this and it is something that could credibly occur given the situation in the Jenin area. I find that the reason he came to the UK was probably a combination of seeking a better life in the UK and understandable disillusionment with the political situation in Palestine.*
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> *14. I repeat that it has not been argued that his treatment by the Israeli authorities could entitle him to international protection. This is a proper concession to have made. There is nothing to indicate that any curfew was not lawfully imposed. MA was aware of it but chose to ignore it for no good reason. He was therefore at risk of being arrested. The ill treatment that he received should not have occurred but he received no injury and it was relatively short-lived. It does not amount to serious harm or persecution. It is easily avoidable in the future by simply sticking to the hours of any future curfew that might be imposed.*
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> *15. The appeal was also put on the basis that there would be very significant obstacles to integration and that the appeal should be allowed on this basis. On my findings this is unarguable. MA was educated to a high level there and worked in a variety of jobs. He has been away from Palestine for a very limited time and he has many family members there that he continues to be in contact with. In closing submissions it was argued that the obstacle to integration was that it was not possible for him to safely get to where his family are. There is no evidential basis for this in MA's own evidence, or, more importantly, on my findings of fact or in any of the background evidence. I was not taken to any evidence*
> *on which I could base such a finding.*

4. On 7 July 2020 he made further submissions which were accepted as a fresh claim. His fresh claim was rejected on 14 January 2021. He appealed and the appeal came before Judge Hoffman.

5. The Judge took Judge Moran's decision and his starting point. He summarised that Judge Moran had found that the appellant's claim was not politically active and that there was no plausible reason why the Palestinian authorities would be interested in him.

6. He went on to consider the case on the evidence before him. He set out his findings as follows:

> *15. At the hearing before me, the appellant maintained his position that he failed to mention that he feared the Palestinian authorities during his screening interview on 26 August 2018 because the agent who brought him to the UK told him that were he to do so, he would be returned to the Palestinian Territories. On this point, I agree with both Judge Moran and the respondent that the appellant's explanation is completely lacking in credibility. It simply makes no sense whatsoever for the appellant to come to the UK in order to seek asylum but then withhold the basis of his fear of persecution from the Home Office.*
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> *16. As explained above, Judge Moran also placed weight on the fact that the appellant had failed to mention his fear of the Palestinian Authority in his PIQ completed on 12 December 2018. Before me, the appellant said that he did raise this with his then solicitor at the time the PIQ was prepared and that detail was provided in a witness statement that was prepared subsequently. According to the appellant, that witness statement was sent by his solicitor to the wrong Home Office email address.*
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> *17. I have found the appellant's answers to the questions in the relevant part of the PIQ [RB19/27] to be ambiguous at best. In answer to Q1 ("Why do you fear returning to your home country?") the appellant's solicitor wrote "If I got arrested in Palestine. [sic] I would be persecuted or they will detain me indefinitely & subjected to torture[.] The authorities were suspicious of me[,] I am not sure of the reasons". While not explicit, in hindsight, that could be said to be a reference to the appellant fearing the Palestinian authorities. However, in answer to Q2 ("Details of specific events which happened to you in your country that make you fear going home"), the answer given was, "I was arrested by the Irali [sic] authority on three occasions". I take that to mean the Israeli authorities. As Judge Moran found, there is no mention of the Palestinian authorities raiding the appellant's house. But I note that in answer to Q5 ("If you fear a specific person, organisation or group in your country, tell us their name and as much detail as you can about them…") the appellant named the "Palestinian Authority & Protective Security" commanded by Zeyad Habelreeh. At the end of that section of the PIQ, the following was written: "Complete witness statement, with further details to follow". The appellant has provided evidence to show that his solicitors did email a statement to the Presenting Officers Unit in Newcastle on 21 January 2019 [HB/38], which I find must have been the wrong address as the appellant had yet to have a substantive asylum interview let alone a decision by the respondent. The*

appellant has also provided a copy of a letter dated 13 May 2023 belatedly complaining to his former solicitors, Fountain, about them having sent his statement to the wrong email address. In oral evidence, the appellant told me that Fountain had acknowledged receipt of his letter but had not provided a formal response to his complaint. He also said that he had not chased them for this. Mr Reynolds did not take issue with that letter, and I note in his 15 January 2019 statement the appellant does claim that he fears the Palestinian security forces [HB/30]. I am therefore willing to accept that at the time of the PIQ, i.e. December 2018, the appellant had instructed his solicitors that the basis of his claim was that he feared the Palestinian authorities. Nevertheless, I find that none of this explains the appellant's earlier failure to raise his alleged fear of the Palestinian authorities when he had his asylum screening interview in August 2018.

18. As explained above, Judge Moran also found that there was no plausible explanation as to why the Palestinian authorities would be interested in the appellant. Indeed, in answer to Q1 of his PIQ, the appellant said that he was not sure of the reasons why he faced persecution [R19/27]. Furthermore, during his asylum interview on 22 January 2019, he said that he had never had been politically involved (Q49); that he had no idea why the Palestinian Authority was after him (Q57); and that he did not do anything to cause a problem for himself (Q59) [RB19/54-56]. His witness statement for his appeal before Judge Moran was also silent on why the Palestinian Authority was interested in him for "political suspicion"; at paragraph 12, the appellant said that he had never been politically active [AB19/23]. However, in his more recent witness statement of 24 October 2022, at paragraphs 3.v and vi, he says that the problem he faces in the Palestinian Territories is a result of him criticising the government [HB/23]. During oral evidence, I asked the appellant why he now says that the Palestinian authorities are interested in him because he was critical of them. The appellant's answer was that he was not sure what part of his criticism they took offence to: that he called them traitors or that they were colluding with the Israelis. Mr Reynolds submitted that there was no evidence that the appellant had been critical of the authorities, although I accept Mr Singh's submission that this would be difficult to evidence in practice. Nevertheless, I find that the appellant's belated explanation about why the Palestinian authorities are interested in him is not sufficient to convince me to depart from Judge Moran's finding.

19. As part of his fresh asylum claim, the appellant has also produced summonses purportedly from the Palestinian police. The first is dated 12 July 2018 and is addressed to the appellant at Jabalia Camp. It requires him to report to the camp's police station "immediately, on Saturday 14/7/2018" [HB/47]. The second summons, again addressed to the appellant at Jabalia Camp, is dated 14 August 2018 and requires the appellant to report "immediately, on Wednesday 15/8/2018" [HB/49]. Both are in relation to "An important issue with us". I would note two things regarding these documents. First, despite pre-dating the appellant's arrival in the UK, they were not provided to the Home Office until after the appellant had lost his first asylum appeal. There has been no satisfactory explanation for this delay. Second, it is unclear why the summonses would have been delivered to the appellant's aunt in the Jabalia Camp when the appellant says that he had lived in Jenin Camp since he was 12 years old. That is especially the case when, according to the appellant, the event that made him flee the

Palestinian Territories was a raid on his own house in Jenin, which means the security forces must have known where he lived. These documents cannot be looked at in isolation, and considered in the round with the credibility issues discussed above, I find that I can attach little weight to them.

20. The appellant has also provided a letter from the Palestinian Scholars League who claim to have been instructed by the appellant's brother on 15 December 2019 to represent him in relation to his legal problems in the Palestinian Territories [HB/51]. Their letter provides little information. It says that they petitioned to obtain a pardon for the appellant and "did everything we could in this regard but all in vain". It does not, however, say why the authorities are interested in the appellant. There are also emails between the appellant's UK solicitors and someone purporting to be the appellant's Palestinian lawyer [HB/56-57] but the email address of the Palestinian lawyer does not match that on the Palestinian Scholars League letter. Furthermore, that email also does not mention why the appellant is wanted by the authorities. And as the respondent also asserts, there is no evidence that the letter and email are from genuine lawyers. Considered in the round with the other evidence, I find that I can attach little weight to these documents.

21. I also find that I can attach little weight to the witness statements from the appellant's mother, brother and aunt on the basis that as family members of the appellant, they cannot be said to be objective witnesses.

22. For the reasons given above, I find that, even to the lower standard applicable in protection cases, the appellant has failed to demonstrate that there is a reasonable degree of likelihood that he faces a risk of harm in the Palestinian Territories. As with Judge Moran, I find that the appellant has fabricated his asylum claim in order to gain entry to the UK.

23. Finally, the appellant has also provided a supplementary bundle including a further witness statement dated 15 May 2023 [ASB/2]. In his second witness statement, the appellant says that his now deceased father had been under the protection of the UNRWA since 2002 and that his father had a UNRWA card [ASB/3]. However, I do not see how this adds anything to the appellant's claim. While the appellant says at paragraph 4 of his second witness statement that the UNRWA stopped providing his family with protection in 2015, it is not said who they were protecting his family from. Moreover, given that I do not accept that the appellant is at risk from the Palestinian Authority, he requires no protection in any event.

7. The appellant was dissatisfied and applied for permission to appeal. In doing so he raised 4 grounds of appeal:

(a) That the Judge erred in law by placing weight on the failure of the appellant to mention that he feared the Palestinian Authorities in his screening interview. The ground asserts that the appellant's evidence was that as he was under the control of the agent he followed their instructions.

(b) It is submitted that the Judge contradicted himself at paragraphs 16 and 17 where he finds the appellant's answers "ambiguous" however accepts and sets out that the appellant had relied on his previous legal representatives to complete his PIO questionnaire. The Judge accepted a complaint had been made dated 13/5/23. It was submitted that this contradiction was a material error of law.

(c) Ground three asserts that the Judge was not convinced to depart from the previous findings, but does identify the core element of the fresh claim was the Court summons.

(d) The Judge places little weight on the statements from the appellant's mother, brother and aunt on the basis that they are family members. The Judge has not properly considered the contents of the statements and has dismissed them by saying that they cannot be objective witnesses.

8. Permission to appeal was granted by First-tier Tribunal Judge Chowdhury on all grounds.

The hearing

9. At the hearing Ms Ferguson relied on the grounds and expanded on them in her oral submissions. She submitted that it was surprising that two Judges have rejected the account as implausible and lacking in credibility as there was neither anything implausible in it, nor incredible on the face of it.

10. She submitted that the issue has arisen by a misunderstanding as to why he would be of interest to the authorities, once that has been rejected then everything else he has said has been discounted.

11. The supporting evidence he has obtained have been given little weight without proper scrutiny and consideration. The credibility issues are not so undermining of the claim that, when considered I the round, the documents can be disposed of without proper analysis.

12. Finally Ms Ferguson sought to argue a point not taken in the grounds as to the application of Article 1D of the Refugee Convention, and that neither Judge Moran, nor Judge Hoffman had considered the case through the lens of Article 1D. As a consequence, the credibility assessment of both the Judge under appeal and that of Judge Moran, if viewed through the correct lens then it more likely that the Appellant's narrative would be accepted.

13. In response Mr Wain submitted that the Judge has properly considered the evidence before him and come to sustainable findings. Grounds 1 and 2 need to be read together, and there is no conflation of the accepted part of the claim that the appellant was arrested by the Israeli authorities, but not wanted by the Palestinian ones. It is clear that the Judge was cognisant of the subtlety in the claim, and approached it in that regard.

14. Ground 3 is in essence a challenge to the way in which the Judge approached the STARRED Secretary of State for the Home Department v D (Tamil) [2002] UKIAT 00702, colloquially known as the 'Devaseelan' considerations. The Judge finds at paragraph 19 that the documents were not previously submitted despite on the face of it being available and that they appear inconsistent with the appellant's narrative. The judge took them into account in the round but did not accept that the documents could have weight placed on them.

15. The final ground was in essence a challenge to weight. The Judge had considered everything in the round and it was perfectly reasonable to find that family members were not objective witnesses.

16. Turning to the point made outside of the rules under Article 1D, Mr Wain submitted that it the submission was at odds with the decision of this tribunal in Lata (FtT: principal controversial issues) India [2023] UKUT 163 (IAC), in particular the headnote:

> *5. Whilst the Devaseelan guidelines establish the starting point in certain appeals, they do not require a judge to consider all issues that previously arose and to decide their relevance to the appeal before them. A duty falls upon the parties to identify their respective cases. Part of that process, in cases where there have been prior decisions, will be, where relevant, for the parties to identify those aspects of earlier decisions which are the starting point for the current appeal and why.*
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> *6. The application of anxious scrutiny is not an excuse for the failure of a party to identify those issues which are the principal controversial issues in the case.*
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> *7. Unless a point was one which was Robinson obvious, a judge's decision cannot be alleged to contain an error of law on the basis that a judge failed to take account of a point that was never raised for their consideration as an issue in an appeal. Such an approach would undermine the principles clearly laid out in the Procedure Rules.*
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> *8. A party that fails to identify an issue before the First-tier Tribunal is unlikely to have a good ground of appeal before the Upper Tribunal.*

17. Mr Wain submitted that there was no material error of law in the decision

Decision and reasons

18. I have carefully considered the oral and written arguments presented by the appellant in this case. I have also gone back through the documentation that was before the Judge in the First-tier Tribunal. Having considered those matters I have come to the conclusion that there is no error of law in the Judge's decision. My reasons for this are as follows.

19. I take grounds one and two together. Ms Ferguson sought to submit that there was a failure of the Judge to take into account the explanation that the appellant had complained about his previous solicitors not mentioning the fear from the Palestinian Authorities. I do not accept this.

20. It is clear from the decision of the Judge that whilst he accepted that the appellant had told his solicitors of the fear from the Palestinian Authorities in December 2018 when they complied the PIQ. However, that said nothing to the main conclusion of Judge Moran that there was no mention of the fear in his screening interview. This is squarely the conclusion of the Judge at paragraph 17.

21. The Judge then goes on to consider the appellant's explanation that he had in fact been critical of the authorities, but he was not sure what it was that he had said that they had taken offence to. The Judge considers his evidence on this but rejects it for clear reasons given in paragraph 18. The Judge in particular finds that "*the appellant's belated explanation about why the Palestinian authorities are interested in him is not sufficient to convince me to depart from Judge Moran's finding*".

22. The submission in ground one in relation to the instructions of the agent are simply an effort to re-argue the point after the event, rather than identifying a material error of law in the Judge's assessment. There is nothing, contrary to ground one, contradictory about the Judge's findings and in my judgment no material error of law in his assessment.

23. Ground two, as identified above, ignores the Judge's finding that the appellant failed to mention his fear in the screening interview. The Judge was entitled to come to this finding, and having come to it, the complaint made in ground two is not well founded. Again there is nothing contradictory about the Judge's findings.

24. Ground three complains that the Judge has not properly considered the documentary evidence in particular the Court summons. The Judge gives clear reasons for not placing weight on these documents at paragraph 19, in particular he finds that there has been no satisfactory explanation for the delay in providing the document, in particular that it was issued before he claimed asylum the first time.

25. The Judge then makes further credibility findings that he does not understand why it is addressed to the appellant in the Jabalia camp, to his aunt's address. This is because not only has he not lived there since he was 12, but also that on his case the Palestinian Authorities raided his house in the Jenin camp, meaning the security services knew where he lived. There is no challenge to this finding in the grounds of appeal, and in my judgment is clearly a reasoned rejection as to why no weight can be placed on the documents.

26. The other tranche of documents relied on ais a letter from the Palestinian Scholars League and emails between the UK solicitors and someone

purporting to be his Palestinian lawyer. The Judge expressly considered these documents at paragraph 20 and finds that he can attach little weight to them for reasons given. Again, there is no challenge to the reasons he gives in the grounds of appeal. The Judge was, in my view, entitled to come to the findings he did in relation to these documents and there is no error of law in his approach or conclusions.

27. Finally, in relation to ground 4, there is nothing wrong, having clearly taken everything into account to conclude that the statements form his family members cannot be said to be objective. It is a statement of fact, whether they can be given weight will depend on the complete sum of the evidence before the Judge, however the Judge found that they do not assist him because they are not objective. Given the issues already identified in the oral evidence, and the supporting documentary evidence, the Judge was entitled to conclude that the statements from his family members did not take the claim further.

28. I reject Ms Ferguson's submission that there has been a failure in both appeals to consider the matter through the lens of Article 1D of the Refugee Convention, I adopt the reasoning of the Upper Tribunal in Lata:

> *32. Whilst the Devaseelan guidelines establish the starting point in certain appeals, they do not require a judge to consider all issues that previously arose and to decide their relevance to the appeal before them. A duty falls upon the parties to identify their respective cases, consistent with their obligations under rule 2(4) of the 2014 Procedure Rules. Part of that process , in cases where there have been prior decisions, will be for the parties to identify those aspects of earlier decisions which are the starting point for the current appeal and why.*
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> *33. It is important to appreciate that the parties can properly identify their case on appeal to their opponent and to the FtT at various procedural stages, including the filing of the ASA, the undertaking of a meaningful review, at a case management review hearing, at the commencement of a hearing when a judge requests clarification as to outstanding issues and during closing submissions. If by the conclusion of a hearing, a party has not asserted reliance on an issue, a judge can properly proceed on the basis that it is not a matter upon which they are required to reach a decision, though a judge will be aware of the likely lack of procedural and legal knowledge when an appellant represents themselves and of the incumbent requirement to apply anxious scrutiny in a protection appeal. The latter establishes a need for decisions to show by their reasoning that every factor which might tell in favour of an appellant has been properly considered. The application of anxious scrutiny is not an excuse for the failure of a party to identify through the available procedural requirements those issues which are the principal controversial issues in the case. Indeed, to the contrary, the procedural requirements should drive the parties to identify the principal controversial issues which in turn they consider that it is in the interests of their client for the FtT to apply anxious scrutiny in the determination of the case. At the stage of an appeal from the FtT to UTIAC, it should be rare indeed for there to be a point requiring anxious scrutiny (which is not Robinson obvious in the case of an appellant) to have illuded*

> *the reformed FtT appeal procedures. The procedures are specifically designed to ensure that the parties identify the issues and they are comprehensively addressed before the FtT, not that proceedings before the IAC are some form of rolling reconsideration by either party of its position.*
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> *34. We consider that there exists a duty upon the parties to identify relevant issues of their own motion. There is no place for hiding a jewel of a submission in the hope that it will purchase favour on appeal. A party that fails to identify an issue before the FtT that it subsequently asserts to have been essential for a judge to consider is unlikely to have a good ground of appeal before UTIAC. None of this is to say that a FtT judge is to entirely lack curiosity in relation to an aspect of a case that the judge requires further assistance with or which the judge considers should be examined as part of the evaluation of the case. Where, as here, a point has not been identified by the parties, and nor is it one which has independently drawn the attention of the judge, it is not an issue which can be appropriately raised for the first time in the context of an appeal to UTIAC.*

29. The reality in this case is that having been found not credible, the appellant has failed to show for the purposes of Article 1D that he has fallen outside of the protection of UNRWA for reasons outside his control. The effect of the findings by both Judges is that he did not leave the Occupied Territory for the reasons advanced, as such there is no factual basis for concluding that Article 1D would apply to the appellant.

30. I reject Ms Ferguson's attempt to recalibrate the appeal that had a Judge have considered the matter through the 1D lens then they would have viewed his claim differently, such that the credibility points would lose force, and indeed may be viewed differently such that his account could be accepted.

31. This submission is misconceived. A consideration of an appellant's claim requires an assessment as to whether it is well founded or not. In my judgment in this case it would make no material difference if it was viewed "through the lens" of Article 1D or not.

32. For the avoidance of doubt I do not grant permission to appeal to raise this additional ground of appeal. Even if I did, I would find that it is not well founded. The credibility assessment as undertaken by the Judge, applying the principles of Devaseelan in using Judge Moran's decision as his starting point, was one unaffected by Article 1D.

33. For all of the above reasons I find that the Judge did not materially err in law.

Notice of Decision

There is no error of law in Judge Hoffman's decision.

The appeal is dismissed.

Judge T.S. Wilding

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
Date: 23rd March 2024