



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/01721/2017**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 22nd December 2017**

**Decision & Reasons
Promulgated
On 20th February 2018**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

**MR HAETHAM HASSAN AHMED KHALIF KARTT
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A N Janjua, instructed by Morden Solicitors LLP
(Birmingham)

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant was born 14 November 1989 and is a Palestinian national born in Qatar. He appeals against the decision of First-tier Tribunal Judge M Loughridge dismissing his appeal against the refusal of his protection claim on human rights grounds on 10 May 2017.
2. The Appellant arrived in the UK on 18 September 2015 and claimed asylum on the basis that he was unable to return to Qatar as he no longer had a sponsor and that he was unable to reside in Palestine. At the commencement of the hearing, the judge asked the Appellant's

representative to clarify the precise issues which he needed to consider. It was explained that the only issue of risk to the Appellant was in relation to removal to the Occupied Palestinian Territories (OPTs) in particular Gaza. Accordingly, this was an Article 3 claim on the basis of the humanitarian situation in Gaza rather than a claim under the Refugee Convention.

3. The judge concluded that the Appellant's case was an unusual one. He refused to consider a submission that the Appellant was stateless because an application had not been made on that basis. The judge found that he needed to resolve the Article 3 claim in relation to the OPTs but not whether the Appellant would be permitted to enter and reside in Qatar or the OPTs. He found that those issues were of practical significance in terms of how the Respondent dealt with the Appellant, as well as in relation to any subsequent claim to be stateless. He concluded that they were not issues he should resolve in the context of the asylum claim which had been put forward. The judge stated: "Unless the Respondent is satisfied that the authorities in Qatar and/or the OPTs will accept the Appellant, and process him in some way on arrival, and further in the case of the OPTs that the Appellant can actually make his way to those territories, no removal will take place."
4. The judge heard submissions by the parties. There was no oral evidence because it was accepted that the evidence in the Appellant's statement was not challenged. The judge made the following findings:

"25. It should be remembered that the claim under consideration does not involve any assessment of whether it is reasonable to expect the Appellant to be removed to somewhere he has never lived and where he has no family contacts. The sole issue is the extent of any risk to him and, in broad terms, whether there is a risk of serious harm. I am aware of the reference in Dr George's report to children in Gaza dying of hyperthermia, but this type of risk is not really relevant to the Appellant. I accept that his life in Gaza or the West Bank would not be at all pleasant, and probably far less comfortable than in Qatar or Malaysia. However, it is not a question of choosing where would be preferable and my conclusion is that the risk of serious harm in the OPTs is at a low level."

"26. For the above reasons I find that on the balance of the evidence the Appellant has not established his claim of suffering a breach of his protected rights under Article 3 in the event of removal to the OPTs."

5. Permission to appeal was sought on the grounds that the judge erred in his assessment of credibility in failing to determine whether the Appellant held a Palestinian passport. Further the judge failed to take into account the expert report, background material and the Appellant's witness statement, such that he had failed to direct his mind to the relevant issues in considering the risk on return. Permission to appeal was granted by First-tier Tribunal Judge Pedro on 4 September 2017 on the basis that the grounds were arguable.

Submissions

6. Mr Janjua relied on the grounds and submitted that the issue in the case was whether the Appellant could be returned to Gaza. The Appellant's expert report clearly demonstrated that the Appellant's passport meant that he was not able to enter the OPTs. The Appellant held a passport starting with the prefix 000 which was not valid for travel in and out of Palestine. The Appellant was not entitled to go there. Mr Janjua accepted that statelessness was outside the scope of this appeal, but the judge in considering the risk on return, should have made findings on whether the Appellant was entitled to reside in the OPTs and he failed to do so. This was material because when the judge came to consider risk on return, he failed to look at the Appellant's case in the round, including the fact that the Appellant had no right to reside in the OPTs. The judge also failed to take into account that the Appellant had disclosed in his asylum interview that he was not in good health, that he was taking sleeping tablets and was suffering from lack of sleep. This had affected him psychologically and he had been seeing a psychologist.
7. Mr Janjua accepted that there was no medical evidence of the Appellant's mental health before the First-tier Tribunal and he did not know if the point was argued by the Appellant's then representative. The point Mr Janjua made was that the judge, in assessing risk on return, had not only failed to take into account the Appellant's ability to enter the OPTs, but had not considered the Appellant's evidence in the round. Had he done so he would have found that the Appellant was at risk of treatment in breach of Article 3.
8. Mr Tufan relied on paragraphs 3 and 18 of the decision in which it was conceded by the Appellant's representative that the only issue was whether the Appellant would be at risk of Article 3 treatment on return to Gaza. He submitted that there was no need to consider the Appellant's Palestinian passport. Mr Tufan relied on HS (Palestinian - return to Gaza) Palestinian Territories GC [2011] UKUT 124 (IAC) which states in the headnote:

- “(1) The Tribunal has jurisdiction to consider practical issues concerning the return of a Palestinian family to Gaza. GH [2005] EWCA Civ 1182 and HH (Somalia) [2010] EWCA Civ 426 applied.
- (2) Palestinians from Gaza with passports (expired passports can be renewed via a straightforward procedure) are unlikely to experience problems in obtaining and, if necessary getting extensions of, visas from the Egyptian authorities to enter Egypt and cross into Gaza via the Rafah crossing.
- (3) The conditions likely to be experienced by Palestinians in Egypt while awaiting crossing into Gaza are not such as to give rise to breach of their human rights.
- (4) On the basis of the authorities: MA [2008] Imm AR 617; MT [2009] Imm AR 290 and SH [2009] Imm AR 306, it would not be

persecutory or in breach of their human rights for Palestinians to be refused entry to Gaza.

- (5) The Tribunal does not have jurisdiction to decide whether Israel has acted in breach of customary international law in respect of its treatment of Palestinians within the Occupied Palestinian Territories.
- (6) The conditions in Gaza are not such as to amount to persecution or breach of the human rights of returnees or place them in need of international protection.”

Mr Tufan submitted that the judge’s failure to deal with whether the Appellant had a right to reside in Gaza was not a material error of law.

9. In response, Mr Janjua argued that it was clear from paragraph 16 of the decision that the Appellant’s representative submitted that the judge should look first and foremost at the expert report of Dr George. The Appellant had no right to reside in Gaza because his passport was not a full passport only a quasi passport, which could be used to travel to those countries that recognise it. Mr Janjua submitted that it was clear that the issue of whether the Appellant was able to reside in Gaza was argued before the First-tier Tribunal and the fact that he had overlooked it amounted to a material error of law. It was also clear from the Country Guidance case that the judge had jurisdiction to consider the practical issues concerning the return of a Palestinian family to Gaza. Accordingly, the judge’s conclusion that the Appellant would not be at risk of Article 3 treatment on return was perverse.

Discussion and Conclusions

10. The grounds contend that the judge failed to deal with whether the Appellant held a passport. However, it would appear from the submissions before me that the Appellant holds a valid Palestinian passport and the issue argued before the First-tier Tribunal was whether the Appellant would be able to reside in Gaza on that passport (paragraph 16 of the decision). The judge concluded that issues of whether the Appellant could in practice be removed to Qatar or the OPTs, and whether he was stateless, were not matters which fell within the ambit of an asylum claim (paragraph 27). The decision of HS predates the amendments to sections 82 and 84 of the 2002 Act.
11. The Appellant’s appeal was limited to an appeal against the refusal of his protection claim and/or his human rights claim. The Appellant did not rely on the Refugee Convention or humanitarian protection. Nor did he claim to be at risk of harm in Qatar. The appeal was advanced on Article 3 grounds only. It was submitted that the Appellant would be at risk of treatment in breach of Article 3 if returned to the OPTs.

12. Credibility was not in issue in this appeal. The Appellant's account was accepted as set out in his witness statement. This is clear from paragraph 5 of the decision. The Appellant had not made an application for leave to remain on the basis that he was stateless and it was accepted by the Appellant's representative that the judge had no jurisdiction to consider this. The judge only had jurisdiction to hear an appeal against the refusal of a protection claim, human rights claim or revocation of protection status.
13. Whether the Appellant held a full or quasi Palestinian passport was not relevant to whether he would be at risk of serious harm on return to his country of nationality. His nationality was not disputed. The Appellant's representative at the hearing agreed that the only issue before the judge was whether the Appellant would be at risk of treatment in breach of Article 3 on return to the OPTs and particularly Gaza. The judge did not find that the Appellant could return to the OPTs. The judge found that the Appellant would not be at risk of serious harm or treatment in breach of Article 3 on return. In coming to this conclusion, the judge took into account the expert report and the background material at paragraphs 19, 20, 21, 24 and 25 of the decision.
14. The judge considered the humanitarian situation set out in the expert report of Dr George. He considered all relevant matters and concluded that the Appellant would not be at risk of Article 3 treatment on return to the OPTs. The judge's failure to make a finding on whether the Appellant was entitled to reside in Gaza was not material because the issue was whether he would be at risk of harm on return. The judge concluded that the Appellant was not at risk of serious harm or Article 3 treatment in the OPTs. This conclusion was open to the judge on the evidence before him and he gave cogent reasons in his conclusions.
15. Accordingly, I find that there was no material error of law in the judge's decision promulgated on 10 May 2017 and I dismiss the Appellant's appeal.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

J Frances

Signed

Date: 16 February 2018

Upper Tribunal Judge Frances

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

J Frances

Signed

Date: 16 February 2018

Upper Tribunal Judge Frances