



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

Appeal Number: PA/06703/2019

**THE IMMIGRATION ACTS**

**Heard at Manchester CJC**

**Decisions &  
Promulgated**

**Reasons**

**On 6 January 2020**

**On 10 January 2020**

**Before**

**Upper Tribunal Judge Pickup**

**Between**

**SA**

**[Anonymity direction made]**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the appellant: Ms A Nicolauo, instructed by Birnberg Peirce & Partners

For the respondent: Mr A Tan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

*Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269), I make an anonymity direction. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant(s).*

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Devlin promulgated 20.9.19, dismissing his appeal against the

decision of the Secretary of State, dated 13.6.19 to refuse his protection claim made on 4.7.19, based on imputed political opinion and fear of punishment by Hamas on return to the Occupied Palestinian Territories.

2. First-tier Tribunal Judge Grant-Hutchison refused permission to appeal on 29.10.19. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Sheridan granted permission to appeal on 15.11.19.

*Error of Law*

3. For the reasons set out below, I found such error of law in the making of the decision of the First-tier Tribunal as to require it to be set aside.
4. The appellant, who is Palestinian, claims a fear of persecution, ill-treatment, or killing from Hamas on account of the fact that he evaded recruitment, failed to assist them in developing their weapons technology, and breached a specific agreement to return to Gaza following their conditional grant of permission to travel to the UK.
5. Judge Devlin did not find the appellant credible and rejected the claim to be in fear of Hamas on return to Gaza.
6. It is submitted that the First-tier Tribunal erred in the following specific ways:
  - (a) Procedural unfairness in failing to provide the appellant with an opportunity to address the judge's key credibility concerns;
  - (b) Failing to consider court photographs of the appellant receiving a prize for an app he invented and email correspondence between himself and UNWRA seeking protection on return to Gaza;
  - (c) Finding that the appellant's family is not presently supported by UNWRA;
  - (d) Stating that the appellant's father put him through university when in fact he paid his own way through loans and awards;
  - (e) Without reasons being not satisfied that the appellant is sufficiently politically committed to place himself at risk by attending demonstrations against Israel;
  - (f) Failing to consider the appellant's explanation as to why he did not provide detail about his app, namely because it was not patented and because he had already talked to the head of the university about it and that he had mentioned an email about the app named surveying app project which is used in civil engineering. The judge did not use any IT expert to verify if the app existed or not but concluded without any evidential basis that he was not convinced that it existed;

- (g) Requiring expert evidence about Hamas' conduct when there was significant country information before the tribunal as to human rights abuses committed by Hamas and its ill-treatment of opponents;
  - (h) Failing to apply the correct standard of proof in that on the evidence provided the judge should have concluded that the appellant's account was reasonably likely to be true so that he is at risk on return to Gaza.
7. In general terms, the according of weight to evidence is a matter for the judge. It is not an arguable error of law for a judge to give too little or too much weight to a relevant factor, unless the exercise is irrational. Nor is it an error of law for a judge to fail to deal with every factual issue of argument. Disagreement with a judge's factual conclusions, the appraisal of the evidence or assessment of credibility, or the evaluation of risk does not give rise to an error of law.
  8. Neither is it necessary for a judge to defer to the appellant on every adverse finding to allow him yet a further opportunity to explain his case. That would require a judge to return to court after having carefully considered the case to put his potential findings to the appellant for comment. The appellant had a full and fair opportunity to put his case before the tribunal. The judge was entitled to make an overall assessment of the evidence, provided that it is clear that cogent reasons have been provided to support the findings made. Those findings followed the judge's assessment of the credibility of the appellant's account taken as a whole and made only after all the evidence had been considered in the round.
  9. I have addressed the first ground in more detail below. However, the second ground alleging bias or that the judge descended into the arena is no more than a repeat of the first ground, put in a different way, and amounts to a disagreement with the decision. It is not accurate for the grounds to suggest that the judge has transposed his own theory for that of the respondent. This ground also alleges inconsistency and even perversity in the judge's approach, none of which is made out on a reading of the decision.
  10. The third ground is also devoid of merit. I reject Ms Nicolauo's submission in relation to the third ground that the judge's approach to the screening interview was procedurally unfair. Whilst a screening interview is not intended to be a comprehensive statement of the appellant's case, he is expected to be truthful and is invited to state in brief terms all the reasons for claiming international protection. The judge was entitled to draw inferences from an omission to mention a key element, or inconsistencies between the appellant's account in that interview and any later interview, statement or evidence. Ms Nicolauo's submission was effectively that no reliance could be placed on the screening interview. That is entirely inconsistent with the current case law. Whilst Ms Nicolauo relied on R (Dirshe) v SSHD [2005] EWCA Civ 421, she failed to note that in MB

(admissible evidence; interview records) Iran[2012] UKUT 00019(IAC) the Tribunal held that Dirshe is not authority for the proposition that where a claimant requests tape-recording of an interview, but that is not carried out, the record is inadmissible. Tribunals do not have a general discretion to refuse to receive relevant evidence on the basis of procedural defects as to how it was obtained. Rule 51(1) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 is not to that effect. Apart from circumstances where lateness of the evidence means it is unfair to receive it, issues of fairness go to the weight to be attached to evidence, not admissibility. The judge was entirely correct to rely on YL (Rely on SEF) China [2004] UKAIT 00145 in relation to the appellant's earlier accounts. However, the point the judge was making at [110] of the decision was not in relation to the screening interview but the Preliminary Information Questionnaire. The judge was entitled to rely on the interviews, having taken into account the concerns of the appellant and purported corrections. In VW (Sri Lanka) [2013] EWCA Civ 522 at [12], LJ McCombe stated, "Regrettably, there is an increasing tendency in immigration cases, when a First-tier Tribunal Judge has given a judgment explaining why he has reached a particular decision, of seeking to burrow out industriously areas of evidence that have been less fully dealt with than others and then to use this as a basis for saying the judge's decision is legally flawed because it did not deal with a particular matter more fully. In my judgment, with respect, that is no basis on which to sustain a proper challenge to a judge's finding of fact." In the circumstances, there is no merit in this ground of appeal.

11. The allegation of failure to consider relevant considerations or having taken into account irrelevant considerations set out in ground 4, has no merit. The specific country background information relied on in this ground was a prediction made in 2012 and commented on in 2014, not a contemporary assessment of conditions in 2019. No error of law is disclosed. Similarly, the alleged factual errors set out in ground 5 are of no relevance or materiality at all and are simply a scraping of the bottle of the barrel in an attempt to undermine the decision.
12. Many of the grounds are in reality little more than a disagreement with the findings and conclusions of the First-tier Tribunal dressed up as alleged errors of law. None of the case authorities relied on by the appellant materially assist his case.
13. However, I note that in granting permission to appeal, Judge Sheridan considered it to be arguably unfair for the First-tier Tribunal Judge to find that the respondent's reasons for finding the appellant's account not credible did not withstand scrutiny but then proceeded to find he lacked credibility for different reasons, not raised by the respondent or put to the appellant for a response. In essence, this is the first and primary ground of appeal.
14. The way in which the decision is structure is unusual. First, the decision is so long and unmanageable at [247] paragraphs set out over some 44

pages, that the parties are put in difficulty in digesting the findings and reasons. By that reason alone, the decision verges on being in error of law. As the Upper Tribunal stated in Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC), "It is generally unnecessary and unhelpful for First-tier Tribunal judgements to rehearse every detail or issue raised in a case. This leads to judgements becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost."

15. Not only is the decision unnecessarily and unduly lengthy, but a large part of the findings reject the respondent's reasons for rejecting the credibility of the appellant's claim. Peculiarly, the judge then proceeded to make a number of his 'own observations,' before proceeding to make findings on credibility. It appears that the 'conclusions on credibility' at [192] were predicated on the 'observations.' However, none of these 'observations' were matters put to or canvassed during the oral appeal hearing. There were no 'clarification' questions put to the appellant by the judge or the representatives at the hearing in relation to these issues. In the circumstances, Mr Tan conceded in his submissions that was a 'fairness issue' in the decision of the First-tier Tribunal. There is a balance between making findings on the evidence before the tribunal and making points on that evidence that have not been previously canvassed or addressed so as to undermine the credibility of the appellant's claim. Having considered the submissions of both representatives on this issue, I am in agreement that the way in which the judge approached the making of the decision was procedurally unfair so that the conclusions cannot stand and the decision must be set aside.

#### *Remittal*

16. When a decision of the First-tier Tribunal has been set aside, section 12(2) of the Tribunals, Courts and Enforcement Act 2007 requires either that the case is remitted to the First-tier Tribunal with directions, or it must be remade by the Upper Tribunal. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. The errors of the First-tier Tribunal Judge vitiates all other findings of fact and the conclusions from those facts so that there has not been a valid determination of the issues in the appeal.
17. In all the circumstances, at the invitation and request of both parties to relist this appeal for a fresh hearing in the First-tier Tribunal, I do so on the basis that this is a case which falls squarely within the Senior President's Practice Statement at paragraph 7.2.

#### *Decision*

18. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I remit the appeal to be decided afresh in the First-tier Tribunal in accordance with the attached directions.



**Signed**

**Upper Tribunal Judge Pickup**

**Dated 6 January 2020**

### **Consequential Directions**

19. The appeal is remitted to the First-tier Tribunal sitting at Manchester;
20. The appeal is to be decided afresh with no findings of fact preserved;
21. The ELH is 3 hours;
22. There are likely to be three witnesses, including the appellant;
23. An Arabic interpreter will be required;
24. The appeal may be listed before any First-tier Tribunal Judge, with the exception of Judges Devlin and Grant-Hutchison;
25. The appellant is to ensure that all evidence to be relied on is contained within a single consolidated, indexed and paginated bundle of all objective and subjective material, together with any skeleton argument and copies of all case authorities to be relied on. The Tribunal will not accept materials submitted on the day of the forthcoming appeal hearing;
26. The First-tier Tribunal may give such further or alternative directions as are deemed appropriate.

**Signed**

**DMW Pickup**

**Upper Tribunal Judge Pickup**

**Dated: 6 January 2020**