Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: PA/01831/2020**
PA/01834/2020
PA/02233/2020

THE IMMIGRATION ACTS

Heard at : Field House
On the 3 February 2022

Decision & Reasons Promulgated
On the 30 March 2022

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

Rana Alshaer
Sara Alshaer
Maria Alshaer

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms K Reid, instructed by J McCarthy Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants appeal, with permission, against the decision of the First-tier Tribunal dismissing their appeals against the respondent's decision refusing their asylum and human rights claims.

2. The appellants are citizen of the Palestinian Authority born on 1 January 1972, 21 December 1991 and 22 May 1997 respectively. The first appellant is the mother of the second and third appellants. They arrived in the UK on 24

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October 2017 as visitors and claimed asylum on arrival. The claims of the first and third appellants were refused on 27 March 2018 and the second appellant's claim was refused on 19 April 2018. Their appeals against the refusal decisions were dismissed on 21 January 2019 and they became appeal rights exhausted on 26 March 2019. All three then made a fresh claim on 21 November 2019 and all three were refused again.

3. The appellants had been living for the past 11 years in Saudi Arabia, having left the Palestinian Authority in 2005/06 and previously lived in Egypt, the UAE and Gaza. They claimed to be in fear of the first appellant's husband/ the second and third appellants' father who had forced them to smuggle items including gold into Egypt since 2012 and had beaten them when they objected, and who had subjected them to physical and psychological abuse. The appellants had taken advantage of the opportunity offered to come to the UK to attend the first appellant's son's wedding here and had then claimed asylum. The first appellant feared being returned to her husband if she returned to the Palestinian Authority and feared that he in turn would return her to the Sheikh of the tribe who would arrest and detain or kill her. The second and third appellants feared being forced into marriage if they returned.

4. The respondent, in refusing the claims, rejected the appellants' accounts of being forced to smuggle gold and of being forced into marriage, owing to inconsistencies and discrepancies in the evidence and considered that they could return to the Palestinian Authority where they would be at no risk.

5. First-tier Tribunal Judge O'Garro, in her decision of 21 January 2019, accepted the appellants' claims about being subjected to physical and psychological abuse by their husband/ father and accepted their accounts of being forced to smuggle gold and other items, but did not accept that the appellants would be at risk on return to the Palestinian Authority. Judge O'Garro accepted from the background country evidence that the first appellant would have difficulty divorcing her husband but that her husband could divorce her unilaterally with ease and considered that there was no evidence that her husband would want her back and that he had not already divorced her. The judge considered that the lack of communication from the first appellant's husband since she and her daughters came to the UK, and the fact that he had contacted their youngest son Jafar on one occasion shortly after their arrival, suggested that he had no further interest in them. Judge O'Garro found that the appellants were therefore at no risk on return and could go to live in Gaza where they would have the support and protection of the first appellant's family. She considered there to be no reason why the first appellant's husband's tribe would force her to return to a husband who no longer wanted her and no reason why the second and third appellants would be forced into marriage. She accordingly dismissed the appeals on all grounds.

6. The appellants' fresh claim, made on 21 November 2019, was on the basis that their husband/ father had, since May 2019, been threatening them through emails and messages sent to the second appellant which showed that he retained an active interest in finding them and therefore confirmed that they

were at risk on return. Copies of the threatening messages were submitted together with the representations setting out the fresh claim. It was also stated in those representations that the first appellant's son Jafar was at risk on return as he had been summonsed for indoctrination by the Palestinian authorities. A copy of a summons was included, which had been recently issued and required Jafar to report to the police for a "special matter". It was said that the document had been obtained through a friend of Jafar's brother Abdelrahman who had posted it to him in the UK. Since Jafar had missed the date in the summons he was at risk on return.

7. Following the fresh claim, the respondent granted Jafar refugee status in November 2020, but refused the appellants' claims.

8. In refusing their claims, the respondent accepted that there may not be a sufficiency of protection available to women within Palestine in relation to cases of domestic abuse and accepted that internal relocation may not be a viable option, but did not accept that the first appellant's husband had any continued interest in them or that they would be at risk at his hands on return to Palestine. The respondent considered that there was no evidence to demonstrate that the appellants' husband/ father had returned to Palestine from Saudi Arabia or that he had travelled to the UK to find them. The respondent placed little weight on the emails and messages said to have come from the appellants' husband/ father as there was nothing to show that they came from him and it was considered unlikely that it would have taken him over a year and a half to contact them if he had any concerns as to when they would be returning. The respondent noted further that there was no evidence from the first appellant's son to confirm that he had given the second appellant's number to their father, as mentioned in the messages. The respondent also considered that if the first appellant's husband had been able to obtain her daughter's details through her brother, he would also know her whereabouts as she had two sons living in the UK. The respondent therefore concluded that the messages had been provided by the appellants as an attempt to bolster their claim, following the previous judge's findings. The respondent noted that there was no evidence from the first appellant's family in Palestine to suggest that her husband had contacted them in relation to her whereabouts. It was not accepted that he had any interest in the appellants and it was not accepted that they were at risk on return. The respondent considered that they would not be at risk as women and could reunite with their family in Palestine. It was not considered that the documents submitted in support of Jafar's claim added any weight to the appellants' claims.

9. The first, second and third appellants' claims were considered by different Home Office caseworkers, but all three were refused on the same basis, with each caseworker considering that the emails and text messages were of little weight. The first appellant's claim was refused on 14 February 2020, the second appellant's on 26 February 2020 and the third appellant's on11 February 2020.

10. The appellants appealed against the respondent's decisions and their appeals were heard in the First-tier Tribunal by Judge Cohen on 29 January 2021. All three appellants gave evidence before the judge. The judge recorded the second appellant as denying that the threatening messages were made up. She said that she had ceased contact with her brother two months previously but had learned from him through a friend that their father had returned to Palestine in 2019. When asked why her brother would have given her contact details to her father when he knew she was fearful of him, her response was that she had not asked him specifically, but he had believed that their father just wanted to talk to her nicely, that he was sick and that he did not intend to get angry with her. Her brother had previously not been on good terms with their father as their father had been refused a visa three to four months after they had arrived in the UK, and he had blamed him for that.

11. In a decision dated and promulgated on 22 July 2021, Judge Cohen dismissed the appellants' appeals. He did not find their accounts to be credible and he considered the emails and text messages to have been fabricated, given the timing of the communication and the fact that the first email was dated on the same date as the appellants had become appeal rights exhausted following the dismissal of their previous appeal, on 13 May 2019. The judge did not accept the evidence that the appellants' husband/ father had returned to Palestine and did not accept that there had been any threats or communications from him. The judge considered that the appellants could return to the Palestinian Authority where they had family members who could provide them with support and protection. He did not accept that their husband/ father could exert any influence there or that he had any power.

12. The appellants sought permission to appeal the decision to the Upper Tribunal on the following six grounds: firstly, that there had been a delay of six months in the judge's decision being promulgated and a failure effectively to document the case and deal with issues such that the decision was unsound; secondly, that the judge had failed to accord weight to the fact that the respondent had accepted the evidence submitted in respect of the appellants' son/brother Jafar; thirdly that there had been unfairness in the judge curtailing the examination of the third witness; fourthly, that the judge had failed to give adequate reasons for dismissing the account of the appellants' other son/brother passing on the second appellant's details to her father and had failed to assess the credibility of that account in the context of the country background evidence; fifthly, that the judge had erred in his approach to Devaseelan and Tanveer Ahmed by failing to give appropriate weight to the positive credibility findings that had been made by the previous Tribunal; and sixthly, that the judge had failed to revisit the findings made previously that the appellants could return to the care of maternal relatives and not be lone women.

13. Permission to appeal was granted by the First-tier Tribunal on all grounds, but with particular reference to grounds four and five.

14. The matter came before me and both parties made submissions.

15. Ms Reid relied, and expanded upon, the grounds of appeal and Mr Melvin responded to each ground. I shall address the submissions when considering the grounds in turn.

Discussion and conclusions

16. The first ground relates to the judge's six-month delay in writing up and promulgating the decision in the appeal. Ms Reid properly acknowledged, with reference to the judgment in SS (Sri Lanka), R (On the Application Of) v The Secretary of State for the Home Department [2018] EWCA Civ 1391, that delay in itself was not a sufficient basis upon which to impugn a decision unless there was a nexus between the delay and errors made by the judge. However, her submission was that, in this case, the delay was material to the outcome of the appeal as it resulted in a failure by the judge to consider all the evidence and in the judge making findings which were inconsistent with the evidence.

17. Ms Reid referred in particular to the evidence about the reasons why the second and third appellant's brother Abdelrahman gave the second appellant's contact details to their father. She submitted that the judge's record of that evidence was brief, incomplete and inconsistent. His record of the evidence at [33], that the passing on of the second appellant's details by Abdelrahman led to the breakdown of their relationship with him, was inconsistent with the account given at [13] of the second appellant's statement that the relationship broke down as a result of Abdelrahman assaulting the third appellant. However, it seems to me that the two accounts are not inconsistent and, on the contrary, the judge's record properly confirmed that the evidence was that there was a breakdown in the relationship as a result of a family dispute two months previously. It was that dispute which the appellants relied upon as a reason for Abdelrahman not being present to give evidence at the appeal. Indeed, it seems to me that the judge's record of the evidence given by the appellants was a sufficiently detailed one. His record, at [24], of the nature of the first and third appellant's evidence, reflected the fact that their witness statements were in almost identical terms to that of the second appellant whose evidence was set out in more detail. It is clear from the judge's decision as a whole that he had a complete understanding of the appellants' case, and I cannot see how the delay in writing up his decision undermined the safety of the findings and conclusions reached. I therefore reject the suggestion that the delay was material and do not consider that it led to the decision being legally flawed.

18. The second ground asserts that the judge failed to give weight to the fact that the respondent accepted the documents submitted in support of Jafar's claim which led to the grant of refugee status. Ms Reid appeared to suggest in addition that the appellants' documents, having been submitted at the same time as Jafar's documents and within the same claim, ought therefore to have been accorded equal weight and that the judge erred by failing to give them such weight. However, I reject such a suggestion and consider that the judge

properly addressed the matter at [32]. It is clear from his findings in that paragraph that he gave full consideration to the fact that Jafar's documentary evidence was accepted by the respondent and he gave appropriate weight to the matter when considering the appellants' case. He was entitled to take account of the fact that the documentary evidence submitted in support of Jafar's case had not been tested at an appeal, but in any event he gave further, cogent, reasons for according the matter little weight in assessing the appellants' own claim, namely that Jafar's claim was made on an entirely different basis and was unrelated to the subject-matter of the appellants' appeals. The judge did not have the details of Jafar's claim before him, other than that referred to at [32], but the details now provided by Mr Melvin at [8] of his skeleton argument confirm the basis of the claim and the fact it was consistent with a claim made previously by his brother but entirely different to that of the appellants. Accordingly, the judge was entitled to give the weight that he did to the evidence and he gave full and proper reasons for doing so. I find no merit in that ground of appeal.

19. As for the third ground alleging procedural unfairness on the part of the judge as a result of him curtailing the examination of the third appellant, I take note that the appellants have not produced a statement from counsel to confirm that that occurred despite the suggestion in Mr Melvin's skeleton argument at [12]. According to Mr Melvin, the minutes from the presenting officer at the hearing before Judge Cohen make no reference to any dispute about the evidence and it seems to me that such an allegation needs to be supported by evidence if it is to be regarded as having any merit. Ms Reid quite properly did not push the point further and I therefore reject the assertion that there was any material procedural irregularity as alleged.

20. The fourth ground asserts that the judge erred by rejecting the appellants' account of their son/brother Abdelrahman having passed on the second appellant's details to his father and failing to take account of the background country evidence in that regard. I note that that was one of the grounds upon which permission was granted. However, it seems to me, on the contrary, that the judge gave several cogent reasons for rejecting the appellants' account in that regard and for finding it to be lacking in credibility and was perfectly entitled to conclude as he did. He noted that, despite being asked on several occasions why her brother would have done that, the second appellant was not able to offer an explanation and he found, at [33], that that lacked credibility. He found at [34] that the account was inconsistent with the evidence that Abdelrahman had fallen out with his father after he was blamed for his father's visa application being refused. In addition, the judge gave reasons why he did not consider the threatening emails and messages to be genuine in any event. All of these were proper reasons given by the judge for rejecting the appellants' account.

21. As for the assertion in the fifth ground, that the judge erred in his approach to Devaseelan and Tanveer Ahmed, again I find no merit in the challenge in that regard. Although Judge O'Garro had found the appellants credible in their accounts of their past experiences at the hands of their

husband/ father, she did not make "universally positive credibility findings" in her decision, as suggested at [27] of the grounds. She clearly had doubts about the credibility of the appellants' claim in regard to the ongoing threat from their husband/ father and was not prepared to accept the claim that he was pursuing the family relationships and wanted the appellants to return to him. There was nothing inconsistent in Judge Cohen's findings with the findings made by Judge O'Garro and his approach was completely consistent with the guidance in Devaseelan. He gave full and proper reasons for rejecting the appellants' claim in regard to the ongoing interest and threats from the appellants' husband/ father and was perfectly entitled to consider the evidence of threats to have been manufactured for the reasons cogently given.

22. Having concluded, for the reasons properly given, that the appellants' husband/ father had not returned to the Palestinian Authority, that he no longer had any interest in the appellants and that he had no power or influence in any event, and given that Judge O'Garro had already suggested that he may have unilaterally divorced the first appellant, Judge Cohen was perfectly entitled to conclude that the appellants could return to the Palestinian Authority and be protected by the first appellant's family. That was the conclusion of Judge O'Garro and it was one which was fully and properly open to Judge Cohen on the basis of the same facts. Judge Cohen clearly had regard to the country evidence and there was nothing inconsistent in his findings and conclusions with that evidence.

23. For all of these reasons I find no merit in the grounds. Judge Cohen's decision was a comprehensive one which took account of all the evidence and provided clear and cogent reasoning. I do not find any errors of law in his decision requiring it to be set aside and I accordingly uphold his decision.

DECISION

24. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed: S Kebede Dated: 4 February 2022
Upper Tribunal Judge Kebede