



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

Appeal Number: AA/06368/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Determination**

**On 16 July 2015**

**Promulgated**

**On 19 August 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ARCHER**

**Between**

**NE**

(ANONYMITY DIRECTION MADE)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms R Head, Solicitor, of Lawrence Lupin Solicitors

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

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make the order because the appellant is an asylum seeker who might be at risk just by reason of being identified.

2. The appellant appeals against the decision of the First-tier Tribunal dismissing the appellant's appeal on asylum and human rights grounds against a decision taken on 11 August 2014 refusing to grant him further leave to remain and to remove him to Palestine.

### **Introduction**

3. The appellant is a citizen of Palestine born on 6 September 1987.
4. The appellant arrived in the UK on 2 September 2012 with a student visa valid from 1 September 2012 to 30 January 2014. He returned to Gaza between 29 May 2013 and 17 June 2013. He claimed asylum on 20 July 2013; stating that he would face mistreatment from Hamas if returned because of his past political activities. His activities included criticising Hamas on his Facebook and Twitter pages, publishing articles and taking part in demonstrations. He was detained in March 2013 and again when he returned in May 2013 but he managed to escape on 12 June 2013 and flee to the UK.
5. The respondent did not accept that the appellant is a political activist or that he had attended demonstrations or been arrested. The evidence regarding his activities criticising Hamas was contradictory. He was able to leave Gaza on his own passport.

### **The Appeal**

6. The appellant appealed to the First-tier Tribunal. He attended an oral hearing at Hatton Cross on 7 October 2014. The judge found that individuals publicly criticising Hamas risk persecutory reprisals and applicants who establish a well-founded fear of the authorities will not be able to obtain protection from them.
7. The judge rejected the appellant's claim to have been detained on two occasions because of inconsistent evidence. The on line material post-dating the appellant's return to the UK did not give rise to any real risk because the content did not go beyond general comment of the kind that is common on the internet, the material was password protected and there was no reason to suppose that it would be read by a Hamas official who would take the trouble to identify the appellant on return to Gaza and because there was no evidence that Hamas has the resources to detect and apprehend each person who makes an unfavourable comment on the internet. The appeal was dismissed.

### **The Appeal to the Upper Tribunal**

8. The appellant sought permission to appeal on 10 March 2015. The grounds of appeal assert that the appellant produced copies of the information that he was forced to show Hamas whilst he was in detention and the judge's finding that he had not produced copies is not sustainable. None of the criticism of Hamas is password protected and the comments are evidently highly critical of and offensive to Hamas. The appellant has 6000 followers on Twitter. That is indicative of his profile.

9. Permission to appeal was granted by First-tier Tribunal Judge on Brunnen on 19 March 2015 on the basis that it was arguable that the judge failed to take proper account of or misapprehended material evidence concerning the nature and public availability of the appellant's criticism of Hamas and consequently failed to give adequate reasons for his finding that the appellant would not be at risk on return to Gaza. Those grounds were arguable.
10. In a rule 24 response dated 2015, the respondent sought to uphold the judge's decision on the basis that the judge gave clear and substantial reasons for not accepting the credibility of the appellant and his witnesses, the appellant had sought to enhance his claim, it was open to the judge to find that the comments did not go beyond common comment and that the appellant had not demonstrated to the required standard that the authorities in Gaza were aware of his posts or Twitter comment or that they had the resources to identify the appellant.
11. Thus, the appeal came before me.
12. Ms Head submitted that the judge did not adequately consider the evidence. The appellant evidenced postings that were highly critical of Hamas. The judge misunderstood the evidence and the nature of the postings. The finding that Hamas would not know about the postings is not consistent with the objective evidence showing detentions because of postings on Facebook. The errors infect the assessment of risk upon return. If the Upper Tribunal identifies a material error of law then the appeal should be remitted for a fresh hearing. There is new material in light of the appellant's ongoing political activity.
13. Mr Whitwell responded that the grounds simply amount to a disagreement regarding the credibility findings. The decision is nuanced and refers to the objective evidence. The USSSD report at page 14 of the appellant's bundle refers to anecdotal reports rather than evidence from non-partisan actors or non-government organisations. The reference to password protection is not determinative of the risk on return finding – two other points are made that do properly support the finding. Twitter has 600 million users and it is not open to the appellant to post a few critical comments on social media and then say that Hamas will be aware of each and every post. The appellant is not calling for the overthrow of Hamas and the judge was critical of his credibility. The outcome of the appeal is not perverse.
14. Ms Head responded that paragraph 56 of the decision is clear; Hamas do exercise reprisals. The judge has not adequately considered the material before him. The USSSD can only get evidence from people living in Gaza. The appellant has always said that his activity is political and he has clearly made fun of Hamas. The findings about detention are caught up with the error about the appellant's profile and Hamas being aware of that profile.

## **Discussion**

15. I find that the judge erred in fact when he found that Facebook and Twitter are password protected. That is not disputed by the respondent. That finding cannot be isolated from the remainder of the judge's findings in relation to the risk of Hamas being aware of the appellant's social media activity and their likely response. In addition, I find that the error of fact infects the overall assessment of the appellant's credibility because the social media activity is a central plank of the appellant's claim and the judge's finding that the social media activity did not give rise to any real risk on return impacted upon the overall credibility assessment.
16. I find that the error of fact amounts to a failure to properly consider relevant evidence and that is a material error of law. There is nothing to suggest that the judge was made aware in submissions that Facebook and Twitter are not password protected but there is none the less an obvious unfairness to the appellant arising from the inadvertent error of the judge.
17. Thus, the First-tier Tribunal's decision to dismiss the appellant's appeal involved the making of errors of law and its decision cannot stand.

## **Decision**

18. Both representatives invited me to order a rehearing in the First-tier Tribunal if I set aside the judge's decision. Bearing in mind paragraph 7.2 of the *Senior President's Practice Statements* I consider that an appropriate course of action. I find that the error of law infects the decision as a whole and therefore the re-hearing will be de novo with all issues to be considered again by the First-tier Tribunal.
19. Consequently, I set aside the decision of the First-tier Tribunal. I order the appeal to be heard again in the First-Tier Tribunal to be determined de novo by a judge other than the previous First-tier judge.

Signed



Date 15 August 2015

Judge Archer

Deputy Judge of the Upper Tribunal