



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
PA/11753/2016

Appeal Number:

**THE IMMIGRATION ACTS**

**Heard at: Liverpool**

**Decision & Reasons  
Promulgated**

**On 16<sup>th</sup> August 2017**

**On 21<sup>st</sup> August 2017**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**DN  
(anonymity direction made)**

Appellant

**And**

**The Secretary of State for the Home Department**

Respondent

**For the Appellant: Mr Nicholson, Counsel instructed by Greater  
Manchester Immigration Aid Unit**

**For the Respondent: Mr Diwnycz, Senior Home Office Presenting  
Officer**

**DECISION AND REASONS**

1. The Appellant is a Palestinian born in 1981. He has permission to appeal against the decision of the First-tier Tribunal (Judge Alty) to dismiss his appeal against the Respondent's decision to refuse him

protection.

### **Anonymity Order**

2. This appeal concerns a claim for protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

### **Background**

3. The Appellant’s case was that he was formerly occupied as an ambulance driver in Gaza. He observed that during the Israeli bombardments of Gaza in both 2012 and 2014 Hamas had used ambulances in order to transport its activists. He made his opposition to this practice public, and received threats from Hamas militants as a result. He now feared for his safety.
4. In her letter of the 13<sup>th</sup> October 2016 the Respondent rejected the claim that the Appellant was an ambulance driver. This was principally because of inconsistencies arising from the Appellant’s stated occupation on a previous visa application and his landing card. Documentary evidence produced to substantiate his claimed occupation were rejected without particular reason, other than a rounded *Tanveer Ahmed* assessment. The Respondent went on to consider the Appellant’s evidence that he had been threatened by Hamas. A number of inconsistencies were identified before the letter concluded, at paragraph 29: “due to the inconsistencies and credibility factors highlighted in the above evidence, and because your claim to have been an ambulance driver has been rejected, it is rejected that you were threatened by Hamas”. Protection was refused.
5. When the matter came before the First-tier Tribunal it was argued on the Appellant’s behalf that the weight of the evidence demonstrated that he had been working as an ambulance driver. It was further argued that since rejection of this matter had formed the cornerstone

of the Respondent's position on the Appellant's credibility, a positive finding on this matter should inevitably lead to a positive finding overall. The grounds of appeal, drafted by Mr Nicholson who was Counsel before the First-tier Tribunal, aver that this analysis had been accepted at the outset of the hearing by the Home Office Presenting Officer. It is submitted that the lengthy cross examination of the Appellant focused almost exclusively on the matter of the claimed employment, as had the Respondent's submissions.

6. When the determination was promulgated, it became clear that the First-tier Tribunal had accepted that the Appellant had discharged the burden of proof in respect of his claim to be an ambulance driver. Notwithstanding the sustained assault on his evidence mounted by the Respondent, that element of the claim was proven. The Tribunal was not however satisfied that the Appellant had spoken out or been targeted by Hamas as a result, and the appeal was accordingly dismissed.

### **The Challenge: Discussion and Findings**

7. Mr Nicholson's grounds are lengthy and detailed. Before me they were distilled into two points. I consider each, and the Respondent's position, in turn.

#### *Fairness*

8. The first is that there was a procedural unfairness in the approach taken to the question of credibility. Mr Nicholson submits that it was agreed at the outset of the hearing that the central issue was whether or not the Appellant worked as an ambulance driver. The Respondent's case, put to the First-tier Tribunal, had been that this man was lying about his claimed occupation, and since that matter of fact underpinned the entire account, the entire account could be dismissed. That being the agreed framework for enquiry, the matter of the Appellant's work had been the only issue canvassed in examination-in-chief, in cross-examination and indeed in submissions by both parties. It was Mr Nicholson's case that very little, if anything, was said about the claimed threats from Hamas. He therefore objects, in strong terms, to the fact that the appeal was dismissed on these credibility grounds notwithstanding the fact that the central issue had been resolved in the Appellant's favour.
9. There are two limbs to this point. The first arises from Mr Nicholson's assertion that he has in effect been taken by surprise by the Tribunal in respect of the Hamas threats. I was not initially impressed by this ground. In his written grounds and oral submissions Mr Nicholson asserts that in effect the only matter in issue had been the claimed

employment: the threats were discounted *because* the claimed employment had been disbelieved. The difficulty with this analysis is that it is not an accurate reflection of the refusal letter. As I note above that letter had placed both matters discretely in issue. It does not say, as contended by the grounds, that “your claim to have been threatened is rejected *because* it is not accepted that you were an ambulance driver”. What the letter does is set out three inconsistencies alleged to arise in the evidence before concluding: “due to the inconsistencies and credibility factors highlighted in the above evidence, *and* because your claim to have been an ambulance driver has been rejected, it is rejected that you were threatened by Hamas”. The refusal letter does not therefore support Counsel’s case analysis.

10. Having heard from both parties, and having had regard to the record of proceedings, I am nevertheless persuaded – just – that the ground is made out. That is because I accept that notwithstanding what might be said in the letter, it would appear that at the hearing, the matters in issue were narrowed as Mr Nicholson describes. The record of proceedings clearly records the opening discussion as follows: “credibility of claim to be an ambulance driver main issue”. I was unable to find any reference to the alleged Hamas threats. Mr Diwnycz was unable to identify any questions asked or submissions made on the topic. Whilst it is arguable that both counsel and the HOPO erred in their reading of the refusal letter, I accept that there was consensus at the hearing to the extent that the matters in issue had narrowed. The consequence of that was that Mr Nicholson did not address the Hamas issue in either his examination-in-chief or in his submissions. Had he done so, the result might have been different.
11. The second limb of this ground is that in its evaluation of the Appellant’s credibility the Tribunal has failed to weigh into the balance the fact that it had already found him to be credible about the central (if not only) matter in issue. The bulk of the interview questions, reasons for refusal and cross-examination at hearing had all been concerned with whether or not he had driven ambulances. The Tribunal found that he had, but nowhere appeared to give credit for that positive finding in its assessment of his claim to have been threatened. Mr Diwnycz accepted that this was so, and that in the circumstances (outlined above) it was a material matter that should have weighed in the Appellant’s favour.

### *Anxious Scrutiny*

12. The grounds on this matter are extensive, detailing several submissions and pieces of evidence that the First-tier Tribunal is alleged to have failed to take into account. The crux of the point is that the Tribunal misunderstood or diminished certain aspects of the

evidence, principally relating to the ability of Palestinians to travel, these being significant for the assessment of both credibility and risk [see for instance at 34]. Mr Diwnycz, whilst making no concessions as to the weight that might ultimately be attached to those matters, accepted that the determination did not reflect any recording or consideration of them. In the context of the Appellant's first ground of appeal, it would appear to be a legitimate complaint that the case put by Counsel was not addressed.

### **Decisions**

13. The determination of the First-tier Tribunal contains material errors in approach as set out above.
14. The parties agreed that in the circumstances the most appropriate outcome was that the decision be set aside and the matter remitted for hearing *de novo* in the First-tier Tribunal.
15. There is an order for anonymity.



Upper Tribunal Judge Bruce  
15<sup>th</sup> August

2017