



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-000237
First-tier Tribunal No:
PA/03709/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 31 May 2023

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

JAI
(anonymity order made)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr C. Appiah, Counsel (direct access)
For the Respondent: Mr A. Basra, Senior Home Office Presenting Officer

Heard at Field House on 20 April 2023

Anonymity:

“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”

DECISION AND REASONS

1. The Appellant is a Palestinian formerly resident in Lebanon. He was born to Palestinian refugees in Saida in 1994. He arrived in the United Kingdom on the 11th June 2018 and claimed asylum. That was refused and on the 22nd December 2022 his appeal to the First-tier Tribunal was dismissed by Judge Bagral. The Appellant now has permission to appeal against that decision.

Basis of Claim

2. The basis of the Appellant's claim was as follows. When in Lebanon he had worked for a man who was a member of the Future Movement Party. Another local businessman, affiliated with Hezbollah, started undercutting the Appellant's boss by offering cheaper prices. A rivalry developed. This man tried to get information from the Appellant about his boss. The Appellant refused and on the 2nd of October 2017 the Appellant was at work when an incident occurred. As I shall return to below, there were various accounts of this incident but the core claim is that the business where the Appellant worked was attacked by the rival; shots were fired and two of the Appellant's colleagues were killed. The rivalry then escalated as the families of the dead men set fire to the assailant's business. The Appellant and his family determined that it was not safe for him to remain in Lebanon, and he fled.
3. Today the Appellant fears that the other side in this rivalry will kill him because he was a witness to the attack, or that they will otherwise seek retribution against him. These fears were amplified when, in February 2020, the Appellant's brother was attacked by three men working for the business rival. He was badly beaten and hospitalised. The Appellant believes that his brother was mistaken for him. Today the Appellant suffers from PTSD and major depressive disorder.

Reasons for Refusal

4. The Respondent's decision on the Appellant's asylum claim was set out in a decision letter dated 18 June 2020. Two alternative reasons for refusal are given. The first is that as a Palestinian formerly resident in Lebanon, the Appellant was eligible for protection by UNRWA. The Secretary of State therefore concluded that he was excluded from the scope of the Refugee Convention by virtue of Article 1D. The second reason for refusal is that the claim was disbelieved.

The Decision of the First-tier Tribunal

5. The appeal was heard on the 29th March 2022. The written decision was served on the parties on the 22nd December 2022.
6. Judge Bagral begins by noting that the Appellant elected to give oral evidence, notwithstanding that an assessment conducted by consultant psychiatrist had found him to be unfit to do so. He gave evidence with the assistance of an Arabic interpreter and confirmed that he had understood all the questions put to him. His evidence is summarised between paragraphs 23 and 32 of the decision. His testimony was supported in material respects by newspaper articles produced by both sides. These articles confirmed that a firearms incident had indeed taken place in Saida on the 2nd October 2017, and that two men were killed; things spiralled and shops owned by the alleged perpetrator were set alight.
7. Before embarking on her findings of fact the Judge noted that Ms Ahmad, who that day had appeared for the Secretary of State, had conceded that if the story was true then the Appellant would succeed in his appeal. This concession had two

effects: it withdrew the Respondent's reliance on Article 1D of the Refugee Convention, and it put credibility at the heart of the appeal.

8. With that in mind the Tribunal gives itself careful self-directions about how to approach credibility in asylum appeals. It notes the general consistency between the core of the claim and the newspaper articles. Judge Bagral concludes, however, that notwithstanding the relatively low standard of proof, the Appellant had not made out his claim. She gives several reasons for this:
- i) The Appellant had initially placed the incident in June 2017; in a letter from his solicitors he then said it was in September; it was only later that he settled on the 2nd October 2017, a date that fitted with the newspaper articles;
 - ii) There was a discrepancy in the Appellant's evidence about where he was when he heard the gunshots. He had claimed in interview that he was in his workplace, but had then told one of the medical experts in the case, Dr Husni, that he was in his flat at the time;
 - iii) There was a discrepancy in the Appellant's evidence about the initial meeting with the business rival. He had originally claimed that the man tried to get information about his boss by threatening him. It was only in oral evidence that the Appellant claimed that the man had in fact offered him money in exchange for the information;
 - iv) The Appellant claims that the man he fears is powerful and connected to Hezbollah and that he would not therefore be safe from him wherever he went in Lebanon. This is difficult to reconcile with the Appellant's own evidence that he managed to hide at an aunt's house for some five months after the incident;
 - v) The Appellant sought to blame the inconsistencies in his evidence on his bad mental state. He asserted that he is unable to remember even the most important dates and places. This was not however borne out by his oral evidence, in which he was able to recall dates and timescales without any apparent difficulty. The Tribunal did not accept that the Appellant's poor mental health was an adequate explanation for his inability to answer straightforward questions about simple matters of fact;
 - vi) The Appellant also tried to blame the inconsistencies on misunderstandings and difficulties in interpretation. The Tribunal rejects this explanation since the Appellant had at no stage raised that he had difficulties in understanding;
 - vii) In respect of the claimed attack on the Appellant's brother in February 2020, the Tribunal notes that this was not communicated to the Respondent until after the claim was refused in June of that year. There was no reasonable explanation for that delay. The Appellant is in regular contact with his family and it was plainly pivotal to his claim. The documentary evidence now produced in respect of that incident, a letter from a doctor relating to the brother's injuries and a letter from the Palestinian Liberation Organisation, are both dated

February 2020, and yet they were not produced until the appeal was underway;

viii) The account given by the Appellant's brother is inconsistent with what is reported in the letters from the doctor and the PLO; there is no evidence from the hospital where he was purportedly treated.

9. As to the Appellant's mental health the Tribunal was not satisfied with the evidence presented. At his initial screening interview in June 2018, the Appellant reported suffering symptoms of anxiety. The Tribunal observes that this was unsurprising, given that the Appellant had just arrived in the United Kingdom to claim asylum. He did not however give the impression, or present, as someone suffering from a severe psychiatric illness. The first time that this is mentioned was in a letter from his solicitors asking that the Appellant be excused from attending a reporting appointment in November 2018 because he was suffering with psychological problems and "suicidal ideations". He first saw Dr Husni on the 31st October 2018. It is noted that Dr Husni was not at that stage provided with any documents in relation to the Appellant's asylum claim, nor with any other medical notes relating to his treatment. It was on this occasion that the Appellant told Dr Husni that he was in his flat when he had heard the gunshots. He told Dr Husni that upon hearing the shots he ran down to his workplace where he found the two dead men. He described them as friends of his boss, not colleagues as he had reported elsewhere. Judge Bagral continues:

65. Dr Husni opined that the appellant satisfied the criteria for severe PTSD and a moderate depressive episode. His PTSD was precipitated by witnessing the murder of two people. His symptoms were complex and consisted of changes in domains of daily functioning including extreme arousal and vigilance, repeated nightmares, flashbacks suspiciousness and hopelessness. Dr Husni then set out several general observations, without detailed analysis of any substance, stating that his prognosis was poor due to the nature of the trauma. He considered that his symptoms would improve if he was treated with medication and therapy in a safe environment. Dr Husni said that the appellant's mental state would deteriorate and he would become paranoid and even psychotic if he was forced to return to Lebanon. The appellant was convinced that he would be killed but had no immediate intention or plans of suicide but there was a high risk of suicide in the event of a return. Dr Husni noted that the appellant had a support network in the UK (at the time the appellant was living with his uncle and cousin) which was necessary in order for the appellant to feel safe.

66. This is all in stark contrast to the appellant's statements about his mental health symptoms only a few months prior in June 2018.

67. With respect, this is not an impressive report. It is replete with generalisations and lacks analysis. There is insufficient analysis or examination of other causative factors of the appellant's symptoms and no assessment of whether the appellant was feigning or exaggerating his symptoms in view of his history. Nor

was any consideration given to whether the appellant's family in Lebanon would be protective factors against any risk of suicide.

10. It is then noted that when interviewed by an immigration officer some ten months after the consultation with Dr Husni the Appellant confirmed that he was not taking any medication and when asked if he suffered from any mental health conditions he replied "just stress"; he does not refer to any of the severe symptoms he related to Dr Husni. He gives comprehensive answers to questions and what Judge Bagral describes as a "fluid version of the incident". Nevertheless the Appellant's representatives considered it necessary to obtain a further psychiatric assessment. This was produced following an assessment by another consultant psychiatrist, Dr Atalla. He found the Appellant to be "distressed and tearful when discussing his traumatic experiences and saw no future for himself. He was low in mood, hypervigilant, anxious and suffered from regular panic attacks and regular nightmares and had suicidal thoughts (but not current) and was certain that he would kill himself if he was forced to return to Lebanon". Dr Atalla recorded that the Appellant struggled "enormously to conceal his distress but more importantly his anger about his current situation...". Like Dr Husni, Dr Atalla concluded that the Appellant suffered from PTSD. This was a diagnosis which the Tribunal, like the Respondent, was prepared to accept. It was not however prepared to accept at face value the claimed cause, namely events in Lebanon:

78. The report of Dr Atalla is not without its difficulties. Whilst I do not dispute that Dr Atalla is qualified to express an opinion on the appellant's mental health, there are matters arising from his report that are troubling and lead me to have concerns about his opinions in respect of the appellant's prognosis. I note that in his narration of the documents given to him for the purposes of his assessment, Dr Atalla incorrectly gives the date of the refusal letter as 22 August 2020. He goes on to state that one of the documents he used to identify the appellant was his "IAC determination". This comment cannot relate to this appellant. It is not said how and over what time period the appellant was assessed during the two video consultations. He appears to proceed on the information given by the appellant to Dr Husni as his report is similar in terms and phrases and on the assumption that his account is true. Further, there is insufficient analysis of whether the appellant's fear and anger over his immigration status could be a predominant factor of his symptoms.

79. I note the appellant states in his witness statement that he has a GP who has been informed about his mental health and memory problems, but no medical records were provided to Dr Atalla and nor does he refer to the absence of such records. By the time the appellant was last assessed by Dr Atalla, in August 2021, he had been prescribed anti-depressants in June and July 2021. This does not appear to have been drawn to the attention of Dr Atalla who makes no reference to current medication. Further still, and significantly, in respect of suicide risk, Dr Atalla did not consider whether the appellant's family in Lebanon would also be protective factors.

80. Dr Atalla was not informed of the attack on the appellant's brother in Lebanon or the incident referred to by the witness which took place on 31 December 2020, when it is said the appellant witnessed his uncle and his son having an argument resulting in the son destroying items in the home and the police being called. The witness said this incident left the appellant feeling unsafe and worried and that it led to a considerable change in his behaviour and a deterioration in his mental health.

81. There is no satisfactory supporting evidence that the appellant has undergone therapy in the UK, despite the severity of his symptoms, which is claimed is fundamental to his recovery. The email from Talking Therapies is dated 20 April 2021, more than two years after the appellant saw Dr Husni and approximately four months after he first saw Dr Atalla. It states that the appellant self-referred to their service and is on the waiting list. There is no further documentary evidence updating that initial self-referral. In my judgement, the evidence is lacking because the appellant has no intention of engaging in therapy.

82. The appellant's evidence in conjunction with the medical evidence paints an unclear and very mixed picture of his reporting of his symptomology and treatment. The position is totally unsatisfactory and, whilst the appellant is experiencing symptoms of PTSD and depression, there may be other causes for his condition that have not been adequately analysed or disclosed to a medical expert.

83. Considering all of the omissions, inconsistencies and anomalies in the evidence, I have no hesitation in concluding that the appellant has exaggerated his symptoms and has been misleading in his reporting in order to strengthen this appeal.

84. In summary, at its highest the evidence shows that the appellant is likely to be suffering from symptoms of PTSD and depression. Likely contributors are his immigration status and possibly other unknown trauma, but I do not accept that a predominant contributor are his previous experiences in Lebanon. As I stated earlier, I have treated him as a vulnerable witness and had regard to the relevant guidance, but find that he is exaggerating his symptoms. Dr Atalla's observation that the appellant's symptoms are not easily fabricated is different from a definitive conclusion that he is not feigning his symptoms and, in any event, it is not clear whether Dr Atalla would have reached the same conclusion on the issues he was instructed to address had he been privy to the full facts.

The Grounds

11. Ground 1 relates to the length of time between the appeal being heard in March 2022 and the decision being promulgated in December. It is submitted that this was a significant delay which renders the credibility findings unsafe.

12. Ground 2 is that the findings made by the Tribunal are unsafe, unreliable and require scrutiny. In particular it is submitted:
- a) That it was not reasonably open to the judge to draw her own conclusions about why the Appellant might have PTSD or depression;
 - b) The Tribunal placed undue weight on the fact that the Appellant changed his evidence about when the incident occurred;
 - c) No regard is had to a letter from the Palestinian Liberation Organisation which makes specific mention of the Appellant in respect of the incident.

Discussion and Findings

Ground 1

13. There was, as a matter of fact, a ten month delay between the appeal being heard and the decision being promulgated in this case. Was this, as Mr Appiah submits, so excessive as to render the findings made unreliable?
14. There was for many years in this jurisdiction the widely held belief that negative credibility findings reached more than three months after evidence was heard would be normally be regarded as unsafe. The origins of this belief are set out by MacDonald and Toal in *Immigration Law and Practice* (8th ed) at 19.122: it was in a memorandum to Tribunal chairs, presumably from then President, and referred to in unreported decision of Waiganjo (R15717). That rule of thumb makes some sense. The further away in time the testimony was heard, the more difficult it will be to recall. The Judge, even aided by comprehensive notes, or today a recording of the evidence, will necessarily be one step removed from what she made of the witness on the day. In SS (Sri Lanka) [2018] EWCA Civ 139, the Court of Appeal considered the question in more detail. It held that “although excessive delay in making or promulgating a decision is not itself a reason for setting the decision aside, the correct approach is to ask whether the delay has caused the decision to be unsafe so that it would be unjust to let it stand. Where delay between the hearing and the decision in an asylum case exceeds three months and is challenged on an appeal, the UT should examine the FTTJ factual findings with particular care to ensure that the delay has not caused injustice to the appellant.”
15. There can be no doubt that the delay here was unusually long. No explanation is offered for it on the face of the decision. Two things immediately strike the reader, however. The first is that this an extremely detailed and lengthy decision. The Tribunal certainly cannot be accused of having failed to approach this matter with an anxious scrutiny. The second is that the material credibility findings very largely turn on discrepancies arising in the written evidence. It is hard to see what impact the delay could have had on these forensic observations by the judge, since it is abundantly clear from the decision that the Judge re-read all of these materials before reaching her decision. Of the reasons I summarise at my paragraph 8(i)-(viii) above, only two relate to the Appellant’s oral evidence. The first is the Appellant’s belated claim that his employer’s business rival tried to bribe him. He had previously said that he had tried to obtain information from him by threatening him. That he now claimed he was in fact offered money is obviously quite different. It was a discrepancy that the Tribunal can only have identified with reference to its own record of the proceedings. Mr Appiah does not

dispute its accuracy. In those circumstances the finding is unarguably one that must stand. The second point made about oral evidence was the Tribunal's own observation that contrary to the predictions of the medical experts, the Appellant had no apparent difficulty in giving his evidence. Again, that is not a conclusion that Mr Appiah takes any issue with. As he candidly acknowledged in his opening remarks to this Tribunal, he made the decision to call the Appellant in the face of the assessment that he was not fit to do so precisely because his own assessment was that the Appellant had no apparent difficulties in answering questions.

16. I have examined the Tribunal's factual findings with particular care, and having done so I am unable to conclude that the delay, although it is to be regretted, caused this decision to be unsafe. Ground 1 is accordingly dismissed.

Ground 2

17. Several criticisms of the Tribunal's reasoning arise under ground 2.
18. The first is that it was not reasonably open to the judge to draw her own conclusions about why the Appellant might have PTSD or depression. In his oral submissions Mr Appiah expanded on this ground to contend that the judge failed to consider all of the evidence in the round and in effect "put the cart before the horse" when it came to its credibility assessment and the medical evidence relating to the Appellant.
19. It will be noted that I have set out the Tribunal's findings on the medical evidence in some detail. I have done so because these findings were important and central to the First-tier Tribunal's decision. What these passages illustrate is the care and attention that the Tribunal gave to the medical evidence. I am satisfied that the Tribunal squarely engaged with the medical evidence and considered the findings of the two doctors involved in the context of the evidence overall. It gives several cogent reasons for finding that the weight to be attached to the conclusions of the doctors was limited. The doctors did not have all of the relevant information in front of them; both of them proceeded on the basis that the accounts related to them by the Appellant was true; the Appellant's behaviour in the consultations was markedly at odds with his presentation elsewhere; Dr Husni's report was replete with generalisation and lacked analysis; Dr Atalla's report contained details evidently relating to a different patient; neither had access to the Appellant's GP records; neither gave sufficient attention to other possibilities for the Appellant's Post Traumatic Stress Disorder. It was plainly the case that there may be many reasons why somebody would suffer stress or anxiety, and I do not accept Mr Appiah's suggestion that to say so was impermissible speculation on the part of the Tribunal. I am satisfied that the findings on the medical evidence were rational, well-reasoned and open to the Tribunal on the evidence before it.
20. The second criticism arising under the heading of ground 2 is that the Tribunal placed undue weight on the fact that the Appellant changed his evidence about when the incident occurred. Weight is classically a matter for the fact-finding Tribunal: absent irrationality, it is not a matter with which this Tribunal can legitimately interfere. That being the case it is obvious that this argument must fail. It was plainly not irrational for the Tribunal to draw adverse inference from the fact that the Appellant gave three different versions of when the incident is

said to have occurred. Mr Appiah is quite right to say that another Tribunal may not have drawn any adverse inference at all, but that is not the same thing.

21. The final ground relates to a piece of evidence which does not expressly feature in the decision. It is a letter from the Palestinian Liberation Organisation which makes specific mention of the Appellant in respect of the incident. It is dated the 17th July 2019 and it appears in the Appellant's bundle. It is not immediately clear whether this document was submitted to the Respondent with the claim: although the date suggests that it certainly could have been, it is not referenced in the refusal letter. It reads:

“The Popular Committee in Saida area asserts that the Palestinian national [the Appellant] is wanted and chased by the Resistance Brigades Organisation (Saraya Al Moqawama) which is affiliated with the Lebanese Hezbollah. The Popular Committee in Saida is aware of the incident that took place on 2nd October 2017 where two persons were killed at the hands of the Resistance Brigades, which was lead, by a person called Saleh Shehadeh, and as a result [the Appellant] fled to an unknown area after he survived the shootings”.

The writer states that this assertion was provided at the request of the Appellant's father.

22. Mr Basra argued that while this letter does appear to have been overlooked, that is not an omission which can be said to have had a material impact upon the decision overall. Upon reflection, I agree with him. Assuming that the letter is genuinely from the PLO, it remains unclear how the writer, or the Popular Committee in Saida became “aware” of the facts asserted. Given that the letter makes no reference to any member of the Popular Committee having been present during the incident, it can only be assumed they have learned the details from someone else; to that extent there is a limit that could ever be placed on the weight that this document could legitimately attract. There remains the strong possibility, given who requested the document, that the someone was the Appellant's father. That said, it does not appear to me likely that this is a document that could be described as reliable. It appears in the Appellant's stitched bundle next to another letter purportedly from the Palestinian Liberation Organisation to which the First-Tier Tribunal gave short shrift, on account of its internal inconsistencies with the Appellant's own account, and because it was not submitted prior to the claim being determined, when it plainly could have been. The effect of that delay was to deprive the Respondent of an opportunity to verify the document. Those are both criticisms that, it would seem, could also be made of this letter which does not feature in the Respondent's analysis, and which describes the Appellant as someone who “survived the shootings” even though on his own evidence he was not shot at himself. Given that the Tribunal declined to place weight on the other letter from the PLO I have no reason to believe that this one could have tipped the balance in his favour.

Notice of Decision

The appeal is dismissed.

There is an order for anonymity.

Gaenor Bruce
Judge of the Upper Tribunal
Immigration and Asylum Chamber
22nd May 2023