IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005501
First-tier Tribunal: PA/05123/2019

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 08 September 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE MALIK KC

Between

BJ (PALESTINIAN TERRITORIES)
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE
FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr Corin Timpson, Counsel, instructed by Crystal Chambers
For the Respondent: Ms Amrika Nolan, Senior Presenting Officer

Heard at Field House on 19 July 2023

DECISION AND REASONS

Introduction

1. This is an appeal by the Appellant from the decision of First-tier Tribunal Judge Andrew Davies promulgated on 3 May 2022. By that decision, the Judge dismissed the Appellant's appeal from the Secretary of State's decision to refuse his protection and human right claims.

Factual background

2. The Appellant was born in the West Bank on 15 March 1983. He arrived in the United Kingdom clandestinely on 6 July 2007 and made a protection claim on 10 July 2007. The Secretary of State refused that claim on the grounds of non-compliance on 28 August 2007. He made further submissions on 22 February 2018. The Secretary of State treated those submissions as a fresh claim and refused them on 10 May 2019. The Secretary of State, however, granted him discretionary leave to remain on 22 May 2019 until 10 November 2021. His appeal from the Secretary of State's decision was dismissed by First-tier Tribunal Judge Parker on 8 August 2019. Upper Tribunal Plimmer, however, set aside that decision as being wrong in law on 4 March 2020.

3. The Appellant's appeal was heard afresh by First-tier Tribunal Judge Andrew Davies on 6 April 2022. The Appellant gave oral evidence and was cross-examined. He claimed that his uncle, who was in the military wing of Hamas, was killed by the security forces. He further claimed that his two brothers were also killed and his father was detained. He claimed to be at risk at the hands of the security forces on return because of the family link. The Judge accepted his account as to the killing of his uncle and brothers and the detention of his father. The Judge, however, took the view that he was an unreliable witness in relation to his account about himself and found that he, personally, would not be at risk on return. The Judge held that he was not a refugee or entitled to humanitarian protection. The Judge further held that his removal from the United Kingdom would not be incompatible with Articles 3 and 8 of the European Convention on Human Rights. The Judge, in arriving at his decision, observed that he is stateless and highly unlikely to be able to return. The Judge dismissed his appeal on all grounds in a decision promulgated on 3 May 2022.

4. The Appellant was granted permission to appeal from the Judge's decision on 3 December 2022.

Grounds of appeal

5. The Appellant has pleaded three linked grounds of appeal. The first ground is directed at the Judge's decision on the protection claim and the second ground is directed at the Judge's decision on the Article 3 claim. The two grounds essentially make the same point, namely, it was not open to the Judge to reject the Appellant's claim that he would be targeted by the security forces on return. The third ground is directed at the Judge's decision on the Article 8 claim and, in short, is that the Judge failed to properly consider the significance of his finding that the Appellant is stateless.

Submissions

6. I am grateful to Mr Timson, who appeared for the Appellant, and Ms Nolan, who appeared for the Secretary of State, for their assistance and able submissions.

7. Mr Timson focused his submissions on the Judge's finding that the Appellant is stateless. He submitted that the Judge erred in law in failing to properly engage with that finding. He invited me to allow the appeal and set aside the Judge's decision.

8. Ms Nolan relied on her Rule 24 response. She resisted each of the Appellant's grounds of appeal. Her overall submission was that the Judge's findings of fact were open to him and disclosed no error of law. She invited me to dismiss the appeal and uphold the Judge's decision.

Discussion

9. The Judge, at [74], made a clear finding that the Appellant is stateless and highly unlikely to be able to return. The Judge added that he, however, determined the appeal on the hypothetical assumption that the Appellant would be able to return. It is not immediately clear as to why the Judge found the Appellant to be stateless. There is no discussion in the Judge's decision as to the facts surrounding the Appellant's citizenship and the applicable legal principles. There is, nevertheless, a finding that the Appellant is stateless.

10. The difficulty with the Judge's analysis that it simply fails to grapple with the significance of the finding as to statelessness. It is a matter that is relevant to the protection and human rights claims. I am satisfied that the Judge erred in law in determining the appeal on a hypothetical assumption. The Judge was obliged to determine the appeal on the facts found by him. If the Appellant is in fact stateless, it is the context in which the Judge should have considered whether he would be at risk on return. It is true that not every denial of citizenship amounts to persecution. However, it can be a factor that, along with other factors, gives rise to a real risk of persecution or ill-treatment in a particular case. Likewise, the Appellant's statelessness and practicality as to his return are directly relevant to his Article 8 claim. In my judgement, the Judge failed to assess the question of proportionality in the correct context. Instead of making his assessment on a hypothesis, the Judge should have determined the question of proportionality on the facts as they are in the real world. On the Judge's findings, in the real world, the Appellant is highly unlikely to be able to return and is stateless. There is no explanation by the Judge as to how interference with his Article 8 rights would be proportionate in those circumstances.

11. I entirely accept that I should not rush to find an error of law in the Judge's decision merely because I might have reached a different conclusion on the facts or expressed it differently. Where a relevant point is not expressly mentioned, it does not necessarily mean that it

has been disregarded altogether. It should not be assumed too readily that a judge erred in law just because not every step in the reasoning is fully set out. Experienced judges in this specialised field are to be taken to be aware of the relevant authorities and to be seeking to apply them without needing to refer to them specifically. In this instance, for the reasons set out above, I am satisfied that the Judge's decision is materially wrong in law.

12. This appeal, given that it involves protection and human rights claims, calls for anxious scrutiny. As the Court of Appeal explained in *YH v Secretary of State for the Home Department* [2010] EWCA Civ 116 [2010] 4 All ER 448, at [24], in this context, there is a need for decisions to show by their reasoning that every factor which might tell in favour of an applicant has been properly taken into account. The Judge's decision and reasons do not reflect anxious scrutiny of the evidence and the circumstances relating to the Appellant.

Conclusion

13. For all these reasons, I find that the Judge erred on a point of law in dismissing the Appellant's appeal and the error was material to the outcome. I set aside the Judge's decision in its entirety. I apply the guidance in *AB (preserved FtT findings; Wisniewski principles) Iraq* [2020] UKUT 268 (IAC) and conclude that no findings of fact are to be preserved.

14. Having regard to paragraph 7.2 of the Senior President's Practice Statement for the Immigration and Asylum Chambers, and the extent of the fact-finding which is required, I remit the appeal to the First-tier Tribunal to be heard afresh by a judge other than First-tier Tribunal Judge Andrew Davies and First-tier Tribunal Judge Parker.

Decision

15. The First-tier Tribunal's decision is set aside and the appeal is remitted to the First-tier Tribunal for a fresh hearing.

Anonymity

16. In my judgement, having regard to the Presidential Guidance Note No 2 of 2022, *Anonymity Orders and Hearing in Private*, and the Overriding Objective, an anonymity order is justified in the circumstances of this case. I make an order under Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008. Accordingly, 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 both to parties. Failure to comply with this direction could lead to contempt of court proceedings.

Zane Malik KC