



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000430

First-tier Tribunal No: PA/01162/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 2nd of May 2024

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

MAA
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms J Mason of Broudie Jackson & Canter

For the Respondent: Ms E Blackburn, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 26 April 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. By the decision of the First-tier Tribunal (Judge Rhys-Davies) dated 27.1.24, the appellant, a citizen of the Palestinian Authority, has been granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge

Malik) promulgated 8.12.23 dismissing on asylum grounds but allowing on humanitarian protection grounds his appeal against the respondent's decision of 28.7.23 refusing his claim made on 2.4.22 for international protection.

2. The respondent had concluded that the appellant was exempt from the Refugee Convention under Article 1D because he has the protection of UNRWA. The appellant relied on Abed El Karem El Kott and others v Bevandorlasi es Allampolgarsagi Hivatal [2012] EUECJ C-364/11 and asserted that as UNRWA protection had ceased, he was entitled to refugee status under Article 1D. The appellant relied on the conflict between Israel and Hamas in Gaza to argue that UNRWA. He also claimed to be in fear of Hamas. The respondent did not accept that UNRWA protection had ceased and rejected the claim of adverse attention from Hamas.
3. At [15] of the decision, the First-tier Tribunal found that the appellant was not exempt from the protection under Article 1D, referring to UNRWA's statement of 15.10.23 that they are no longer able to provide humanitarian support. However, for the reasons set out from [28] onwards, Judge Malik concluded that the appellant's factual account was not credible and that he had come to the UK as an economic migrant and did not have any well-founded fear on return for a Convention reason. Nevertheless, at [31] of the decision, the judge found that "*as there is now a serious and individual threat to a civilian's life or person by reason of indiscriminate violence in a situation of international or internal armed conflict. As such I find the appellant is entitled to Humanitarian Protection as the conditions in Gaza do amount to a breach of Article 3 of the ECHR.*" Hence, the appeal was dismissed on asylum grounds but allowed on humanitarian protection grounds.
4. In summary, the grounds argue that the First-tier Tribunal failed to address and resolve the appellant's argument that he did not need to prove his claim under article 1A, pursuant to the Home Office Guidance that "*To qualify automatically for refugee status under the second paragraph of Article 1D, individuals previously assisted by UNRWA must show, to a reasonable degree of likelihood, that the assistance or protection they previously received has ceased to be accessible for reasons beyond their control or independent of their volition.*"
5. In granting permission, Judge Rhys-Davies considered, "*There is merit in the Grounds. The Judge makes the clear finding at [15] that the Appellant is not excluded from the Refuge Convention under Article 1D, but does not then apply that finding to the Appellant's arguments (as set out at [7] - [9]) that the Appellant does not need to prove his claim with reference to Article 1A. This an arguably material error of law.*"
6. At the outset of the hearing, Ms Blackburn raised a procedural point, that as the appellant's appeal had been allowed on humanitarian protection grounds and subsequently granted leave on that basis on 5.3.24, by the operation of s104 of the 2002 Act the remaining ground of the appeal was automatically abandoned, unless the appellant served notice under s104(4B) that he wished to pursue the appeal. No such notice has been received by the deadline of 2.4.24. However, Ms Blackburn taking no objection to my doing so, I invited Ms Mason to provide such a notice in writing with an application for an extension of time, which I then granted.
7. On the merits of the grounds, Ms Blackburn conceded the appeal, which concession I considered to have been properly made. Unarguably, by the Judge's own reasoning, the appellant is *ipso facto* a refugee. It follows that the judge was in error in dismissing the appeal on asylum grounds, even though the factual

basis of the claim to fear Hamas was rejected for cogent reasons set out in the decision. It also follows that the appeal should have been allowed on both humanitarian protection and asylum grounds.

Notice of Decision

The appellant's appeal to the Upper Tribunal is allowed.

The decision of the First-tier Tribunal dismissing the appeal on asylum grounds is set aside, whilst preserving the decision allowing the appeal on humanitarian protection grounds.

I remake the decision in the appeal by allowing the appeal on both asylum and humanitarian protection grounds.

I make no order as to costs.

DMW Pickup

DMW Pickup

Judge of the Upper Tribunal
Immigration and Asylum Chamber

26 April 2024