



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

**Appeal Number: IA/00459/2020
(PA/50831/2020)**

THE IMMIGRATION ACTS

**Heard at : Manchester Civil Justice
Centre
On the 25 February 2022**

**Decision & Reasons Promulgated
On the 29 March 2022**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

Nafee Ahmed Abdullah Aljamal

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Howard, instructed by Fountain Solicitors

For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision refusing his asylum and human rights claim.

2. The appellant is a citizen of the Palestinian Authority, from Gaza, and was born on 21 December 1971. He arrived in the UK on 19 November 2018, having left Palestine on 1 November 2018 and travelled through various country, arriving by lorry from France, and claimed asylum on 13 December 2018. His claim was refused on 22 July 2020 and he appealed against that decision. His

appeal was heard in the First-tier Tribunal on 3 February 2021 and was dismissed in a decision promulgated on 17 February 2021.

3. The appellant claims to be at risk in Gaza from Hamas. He claims that his problems in Gaza began in November 2017 when Hamas took over the piece of land that he rented for farming, and used the land to launch rockets into Israel. As a result the Israeli authorities destroyed the piece of land and he lost his livelihood. When he complained to Hamas they beat him, cracking his skull, which required hospitalisation. Hamas subsequently took his children to the mosque to condition them with their ideologies and when he refused to let his children go to the mosque Hamas accused him of being a disbeliever and threatened to kill him if he did not let his children attend. Hamas accused him of being a spy and an informant for Israel. His wife told him that Hamas had visited their home looking for him and he therefore fled Gaza with an agent, escaping through Egypt. He feared being killed on return to Gaza as Hamas had accused him of being a spy and informant for the Israelis.

4. The respondent refused the appellant's claim on the basis that he had given inconsistent accounts at his screening and substantive interviews of what had happened to him in Gaza and his claim was not believed. The respondent did not accept that the appellant was of adverse interest to Hamas and was not satisfied that he was at any risk on return or that his removal from the UK would breach his human rights.

5. The appellant's appeal against that decision was heard by First-tier Tribunal Judge Cole. Judge Cole found that the appellant's account was plausible in that it was consistent with the background evidence, but he noted that there were serious inconsistencies and anomalies in the account which gave rise to doubts about his credibility. The judge considered that the main area of concern with the appellant's account was the timeline and chronology of events, as his initial witness statement and his evidence in his asylum interview were that the incident with the land occurred before the incident concerning the children going to the mosque, whereas his evidence in his appeal statement referred to the mosque incident occurring before the land incident. That also seemed to be the order of events in his oral evidence, although the judge said that it was difficult to obtain clear answers from the appellant. The judge considered that further doubts arose from a letter produced from the appellant's wife and a WhatsApp message from his daughter which were almost identically worded and which put the mosque incident first and gave a date for the land incident which differed to the date given by the appellant. The appellant also gave inconsistent evidence about when he left Gaza.

6. Despite his "serious misgiving" regarding the appellant's evidence, the judge was willing to accept that it was reasonably likely that the appellant had some land which was destroyed after it was used by Hamas to launch rockets at Israel. He accepted that account, to the lower standard of proof, because it accorded with the country information. He also found it reasonably likely that the appellant got into an argument with some Hamas members about the event and that he was hit by a Hamas member and had a head injury as a

result. The judge was also willing to accept that it was reasonably likely that the appellant and his children may have suffered some harassment from Hamas members relating to attending the mosque, since that was in accordance with the country information and seemed plausible. However, the judge did not accept that the appellant was accused of being a spy and did not accept that Hamas came looking for him or that they had any interest in him. The judge found that the incidents were one-off incidents and were relatively minor and considered there to be no risk of him being persecuted by Hamas on return to Gaza. The judge considered there to be no very significant obstacles to the appellant's integration into Gaza and found that his removal would not be disproportionate. He accordingly dismissed the appeal on asylum, humanitarian protection and Article 3 and 8 human rights grounds.

7. Permission was sought on behalf of the appellant to appeal the decision to the Upper Tribunal on four grounds. Firstly that, in light of the positive findings made and in light of the background evidence, the judge had failed to give adequate reasons as to why the appellant would not be at risk on return to Gaza; secondly, that the judge had failed adequately to consider the background evidence before assessing the future risk he faced; thirdly, that the judge had failed to assess the impact that the appellant's head injury may have had on his recollection of the order of events and dates of incidents in Gaza; and fourthly, that the judge had inadequately considered the risk of indiscriminate violence towards the appellant and failed to consider whether he was in need of humanitarian protection.

8. Following the grant of permission to appeal in the First-tier Tribunal the matter came before me. Both parties made submissions, with Mr Howard relying and expanding upon the grounds and Mr Bates providing a response.

Discussion and conclusions

9. With regard to the first ground, Mr Howard referred to the judge's positive findings at [47], [62] and [63] of his decision and to the concession, in the Respondent's Review, that there would be no sufficiency of protection and no internal relocation option if the Tribunal found that the appellant had a well-founded fear of Hamas. He submitted that, in light of those matters and considering that past persecution was an indicator of future risk as per paragraph 339K of the immigration rules, the judge ought to have found that the appellant would be at risk from Hamas, given the references in the country background evidence to Hamas acting with impunity (CPIN, page 263, paragraph 2.3.1) and to the targeting by Hamas of perceived critics (EASO report page 32).

10. However, as Mr Bates submitted, the judge's positive findings went no further than accepting, with some misgiving, that there had been some one-off, relatively minor incidents which did not lead to any further or ongoing interest in the appellant and the fact that the appellant had suffered from an injury to his head during an altercation did not detract from such an assessment. The judge's conclusion to that effect was made clear in the detailed findings at [64]

to [69], where he considered it telling that the appellant was able to remain living in his house for three months after the land incident and to go out to work with no problems from Hamas and that, according to his evidence, Hamas had stopped coming to his house and had not tried to get his children to go to the mosque. The judge considered that that was an indication of a lack of any interest by Hamas in the appellant and as such he was perfectly entitled to reject the appellant's claim that he was considered to be a spy and informant to the Israelis and to reject his claim as to ongoing interest and future risk. In making his findings, the judge plainly had full regard to the background evidence and was fully aware of the references in that country information to the ability of Hamas to act with impunity and to be ruthless to those showing dissent, as he said at [67]. The judge made it clear that the letter and WhatsApp message from the appellant's wife and child added little if any weight to the appellant's claim, noting as he did at [56] and [59] that the documents were virtually identical in their wording and that in part they contradicted the appellant's own evidence.

11. As for the assertion in the grounds that the judge did not assess the impact of the appellant's head injury on his recollection of the order of events and the dates of the incidents, there is no indication in the appellant's statement or skeleton argument that that was ever offered as an explanation before the judge for his inconsistent evidence. I note the lack of any such suggestion at [11] of his appeal statement. Further, as Mr Bates submitted, no medical evidence was or has been produced to suggest that the appellant's memory had been affected by an injury to his head.

12. The final ground of appeal was that the judge had failed to consider the risk of indiscriminate violence towards the appellant and whether he was in need of humanitarian protection. However, as Mr Bates submitted, that was a matter considered by the judge, at [70] to [74] and [77]. At [70] he recorded the submission put to him in that regard and he went on to consider it with reference to the relevant country guidance and background country information, reaching a conclusion that was properly reasoned and entirely open to him on the evidence to which he referred.

13. For all of these reasons I find no merit in the grounds. Judge Cole's decision is supported by full and cogently reasoned findings and the conclusions he reached were based upon a careful assessment of the appellant's claim against the relevant country background evidence and country guidance. The decision is one which was fully and properly open to him on the evidence before him. I do not find any errors of law in his decision requiring it to be set aside and I accordingly uphold his decision.

DECISION

14. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed: S Kebede
2022
Upper Tribunal Judge Kebede

Dated: 25 February