



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

Appeal Number: PA/03776/2019

THE IMMIGRATION ACTS

**Heard at Birmingham Civil Justice
Centre
On 8 January 2020**

**Decision & Reasons
Promulgated
On 16 January 2020**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**AA
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr. C. Howells, Home Office Presenting Officer
For the Respondent: Mr. A. Islam, Fountain Solicitors (Walsall)

DECISION AND REASONS

1. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Row, promulgated on 25 June 2019, in which he allowed AA's appeal against the Secretary of State's decision to refuse a grant of asylum.
2. For the purposes of this decision, I refer to AA as the Appellant and to the Secretary of State as the Respondent, reflecting their positions as they were before the First-tier Tribunal.

3. I make an anonymity direction, continuing that made in the First-tier Tribunal.

4. Permission to appeal was granted as follows:

“The grounds submit the judge has made irrational findings in respect of the evidence placed before him, in particular the absence of evidence of any forced recruitment by Hamas in Gaza, and the favourable credibility findings in the light of the documents lodged by the appellant in support of the appeal which appear to have no bearing on his actual claim and in the light of the finding of the judge that they had been produced to bolster the asylum claim.

The grounds may be argued.”

5. The Appellant attended the hearing. I heard submissions from both representatives, following which I announced my decision that there was no material error of law. I did not set the decision aside.

Error of law decision

6. The grounds of appeal contend that the Judge made irrational findings in respect of the Appellant’s credibility. It was accepted by Mr. Howells that “irrational” is a very high threshold, and I find that the submission that his reasoning was irrational has not been made out.

7. There are three issues listed in the grounds to support the Respondent’s allegation that the Judge’s findings were irrational. The first is that the Judge reversed the burden of proof and relied on an inability of the Respondent to contradict the unsupported oral evidence of the Appellant. This is with reference to [31] of the decision. This states:

“Thus, whilst the appellant was not able to refer me to any incident of enforced recruitment of a student, the evidence of the respondent did not contradict this, and there was evidence that Hamas was involved in serious human rights abuses. The appellant’s account did not run counter to general information relevant to his case.”

8. It was accepted by Mr. Howells that the evidence referred to by the Respondent in the reasons for refusal letter which related to the West Bank was irrelevant. The Judge considered this evidence at [28] and [29] and found that it was not relevant to the Appellant’s case. Mr. Howells accepted that the Judge was correct to give this evidence no weight.

9. At [30] there is reference to the Judge inviting the Appellant’s representative, Mr. Khan, to refer him to any evidence of Hamas forcibly recruiting adult students in Gaza. The Judge states:

“There was none. However a US Department of State report dated 13 March 2019 gave evidence of widespread human rights abuse by the Palestinian Authority and Hamas. This included unlawful or arbitrary killings; systematic torture; arbitrary detention; the detention of political prisoners; interference with rights of assembly and freedom of association; restriction of movement; restriction on political participation; unlawful recruitment or use of child soldiers; use of force to obtain compulsory child labour.”

10. I find that the Judge has not reversed the burden of proof. He accepted that there was no evidence of Hamas forcibly recruiting adult students in Gaza. In the reasons for refusal letter, the Respondent had cited at length evidence relating to the West Bank. It is not unreasonable of the Judge to point out at [31] that the evidence provided by the Respondent did not contradict the Appellant’s position, especially as this evidence was relied on by the Respondent. As was correctly found by the Judge, this evidence was not relevant to the Appellant’s case. The fact that the Appellant’s representative was not able to provide evidence to support the recruitment of students in Gaza does not mean that the burden of proof had been reversed. There is no indication that the Judge was expecting the Respondent to provide material to show that there was no recruitment in Gaza, rather he correctly pointed out that the Respondent’s evidence did not contradict the Appellant’s case.
11. Further, it is clear that the Judge has given weight to the evidence which was before him as shown at [31], where he refers to the USSD report provided by the Appellant.
12. In relation to [45], where the conclusion on the asylum claim is summed up, it was submitted that weight had been given to the Respondent’s failure to provide the evidence referred to at [31], but there is no reference at [45] to any such lack of evidence. The Judge states:

“On the low standard of proof required I find that the appellant was under pressure to join Hamas, received threats from members of Hamas, and that if he returned to Palestine would be at risk of serious harm either by being forcibly recruited into a terrorist organisation or for refusing to join it. He cannot reasonably safely relocate anywhere else in Gaza as Hamas is effectively the government there. The Home Office guidance is that he cannot relocate to the West Bank. The appellant therefore succeeds in his claim as a refugee.”
13. I find that there is no error of law shown in [9(a)] of the grounds of appeal.
14. At [9(b)] the grounds submit that the Judge did not assess the Appellant’s credibility in the round when considering the three witness summons. At [43] the Judge states that he is giving little weight to the three summons produced by the Appellant.

“I take into account all the above matters. I take into account that the standard of proof in an asylum claim is a low one. I put little weight upon the three summonses which the appellant has produced. It has not been possible to authenticate them. The circumstances in which they were produced would seem to indicate that they had been produced to bolster his asylum claim. I take into account however that even if he did this it does not necessarily mean that his claim is untrue. He may have produced the documents because he was frightened. I put little weight upon the statement from the appellant’s sister. She did not attend to give evidence. There was no proof of her identity. It was not possible to cross-examine her.”

15. The Judge considered the documents at [23] and [24]. At [25] he states “I will consider the documents in the light of the other evidence”. This is the correct approach. He then considers all of that other evidence from [26] to [42]. At [43] he comes to his conclusion “taking into account all the above matters”. This shows that he has adopted the correct approach to the evidence as stated at [43].
16. I find that the Judge was entitled to put little weight on the summonses, and was entitled to find that the fact that they were produced did not mean that the rest of the Appellant’s claim was untrue. He gave a reason why the Appellant may have done this. He went through the objections of the Respondent as set out in the reasons for refusal letter from [26] onwards. He took into account all of his findings when coming to the conclusion on the Appellant’s claim from [43] to [45]. He applied the correct burden of proof having taken account of all of the evidence. There is no error of law in his consideration of the summonses.
17. Mr. Howells accepted that the ground set out at [9(c)] was not the strongest point. At [34] the Judge states:

“It is said that the appellant described his friend’s address as being between 20 and 30 km from where the appellant lived. It is in fact 11 to 12 km. Not everyone is accurate in assessing distances. I do not find this to be an inconsistency.”
18. It is clear that the Judge places no weight on this point and, while I find that it would have been better had the Judge acknowledged the inconsistency, and then stated that no weight was being given to it, I find that it is not a material error. On the face of it, this is an inconsistency. The Judge states that not everyone is accurate in assessing distances, indicating that he is attaching little weight to it. Taken in the round with all of the other evidence, and taking into account the Respondent’s acknowledgement that it was not a particularly strong point, I find that there is no material error of law at [34].
19. I have referred above to the fact that the Respondent had relied on wholly irrelevant evidence, as was accepted by Mr. Howells, in relation to the

West Bank. At [32] to [41] the Judge goes through all of the matters which the Respondent raised in the reasons for refusal letter. The Judge finds that these matters do not raise inconsistencies and gives reasons. There was no challenge to these findings, except that at [34]. Further, some of the Respondent's objections, much like the reliance on the irrelevant evidence, were clearly wrong. For example, the Appellant had stated that he could not leave Gaza until 2 July 2018. The Respondent alleged that external evidence indicated that the border was closed between 29 June and 2 July and therefore the Appellant could not have left on 2 July. This is clearly illogical. The Judge further made the unchallenged finding at [42] that there were no matters which affected the Appellant's credibility under section 8.

20. I find that the Judge considered all of the aspects of the Appellant's claim. He went through the Respondent's concerns. He acknowledged that there was no documentary evidence to corroborate the Appellant's account but, as he showed at [26], he was aware that there was no obligation on the Appellant to provide any corroboration, given the low standard of proof applicable.
21. I find that the grounds of appeal are not made out. The Judge properly considered all of the evidence before him. He made findings which were open to him, and he gave reasons for those findings. I find that the Respondent has not shown that these findings, and therefore the Judge's decision, is irrational.

Decision

22. The decision of the First-tier Tribunal does not involve the making of a material error of law. I do not set the decision aside.
23. The decision of the First-tier Tribunal stands.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 13 January 2020

A handwritten signature in black ink, appearing to be 'K. A. S.', written in a cursive style.

Deputy Upper Tribunal Judge Chamberlain