IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

First-tier Tribunal No: PA/04768/2019

THE IMMIGRATION ACTS

Decision & Reasons Promulgated
On 14 March 2023

Before

UPPER TRIBUNAL JUDGE LANE
DEPUTY UPPER TRIBINAL JUDGE ALIS

Between

MR I M I Q
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Lermer, Counsel
For the Respondent: Mr Tifan, Senior Home Office Presenting Officer
Interpreter: Mr Al Harbi

Heard at Field House on 7 February 2023

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

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1. The Appellant is a citizen of Palestine who was born on 10 August 1982. He came to United Kingdom on 24 March 2017 and claimed asylum. The Respondent rejected his application in a decision dated 3 May 2019. The Appellant appealed this decision under Section 82 of the Nationality, Immigration and Asylum Act 2002 and his appeal was listed before Judge of the First-tier Tribunal Turner (hereinafter referred to as the "FTTJ") on 23 October 2019. In a decision promulgated on 5 November 2019, the FTTJ dismissed the Appellant's asylum and humanitarian claims but allowed his appeal under article 3 ECHR.

2. The Respondent sought permission to appeal that decision on 24 November 2019 and on 9 January 2020 Judge of the First-tier Tribunal Bulpitt found it arguable the FTTJ had erred. The operative part of the grant being in the following terms:

   a. *The grounds assert that the Judge erred in (1) making a material error of law by allowing the appeal on article 3 Human Rights grounds and refusing it on Humanitarian Protection grounds and (2) failing to give adequate reasons.*

   b. *It is arguable that the Judge's central findings in relation to Humanitarian Protection and article 3 ECHR are contradictory and therefore irrational and perverse. As the Judge recognises at [34] the definition of serious harm for the purposes of the Humanitarian Protection includes "torture or inhumane treatment or punishment of a person in the country of return"- a definition which mirrors the protection provided by article 3. In the circumstances it is arguable the Judge's decision is irrational.*

   c. *The grounds argued are not clearly defined and although numbered separately they appear to relate to the same issue. In any event all grounds may be argued.*

3. Directions were issued for the appeal to be dealt with on the papers given the onset of the Covid-19 pandemic. On 28 July 2020 Upper Tribunal Judge Hanson (hereinafter referred to as UTJ Hanson) considered the application on the papers and in a decision promulgated on 20 August 2020 found there had been an error in law. The operative part of UTJ Hanson's decision being in the following terms:

   "23 The Judge's findings that internal relocation was not reasonable is not adequately reasoned. There is reference to [76] pf the refusal letter in which it is written:

   > 76. It is noted that due to the restriction of movement of Palestinians in Gaza strip and the West Bank make internal relocation extremely difficult.

   24 The test for internal relocation is whether it is unreasonable in all the circumstances which may not be the same as it being difficult. Also, IQ is the holder a valid Palestinian passport. What is commonly referred to as Palestine, recognised officially as the State of Palestine by the United Nations and other entities, includes the West Bank and

Gaza Strip. There is merit in the assertion by the Secretary of State that the Judge failed to consider the reasonableness of IQ living in another part of the Palestine such as the West Bank.

25 The grounds assert the Judge erred as the country material refers to Israel's control and restriction of movement from Gaza to the West Bank which is possible rather than moving in the other direction which is said not to be permitted.

26 The Secretary of State also asserts the Judge erred in finding there will be a breach of article 3 ECHR as the finding IQ's family will be unable to assist is unfounded on the evidence. There is also UNWRA assistance in the Gaza strip which the Judge fails to factor into the assessment.

27 In N (Burundi) [2003] UKIAT 00065 the Tribunal said that, where the humanitarian situation is poor in the country to which a failed asylum seeker is to be returned that in itself will not generally reach the high threshold needed for a breach of article 3. The Tribunal was guided by the approach in SK [2002 UKIAT 05613 (starred) in which the Tribunal acknowledged that an individual's personal circumstances could be relevant (example if he had a physical or mental disability) but, nonetheless, "there must be a threshold which is of general application. Croatia has suffered the ravages of a fierce and bitter civil war. Thus the mere fact that there will be a return to hardship resulting from that cannot produce a breach of human rights. The general situation must be taken into account as most what is generally accepted in the society in question."

28 In relation to destitution, MB, YT, GA and TK v SSHD [2013] EWHC 123 it was held that case law establishes that article 3 imposes no general obligation on a contracting state to refrain from moving a person to another state or territory in which he would be destitute. It was not the function of article 3 to impose a minimum standard of social support for those in need. A breach of article 3 only occurred when deliberate state action was taken to prohibit a person from sustaining himself by work and when accommodation and the barest of necessities were removed.

29 In Said [2016] EWCA Civ 442 the Court of Appeal held that to succeed in resisting removal on article 3 grounds on the basis of suggested poverty/deprivation, which was not the responsibility of the receiving country, whether or not the feared deprivation was contributed to by a medical condition, the person liable to deportation was required to show circumstances which brought him within the approach in D v UK (1997) 24 EHRR 423 and N 47 EHRR 885. Reduced circumstances or life expectancy did not of itself give rise to a breach of article 3.

30 The Court of Appeal in MA Somalia [2018] EWCA Civ 994 have confirmed Said to be correct adopted what was said in that case. There was no violation of article 3 by reason only of a person being returned to a country which for economic reasons could not provide him with basic living standards. This the Court of Appeal has further reiterated the approach in Said in MS (Somalia) [2019] EWCA Civ 1345.

31 I find the judge has erred in law for the reasons set out in the Secretary of State's grounds and lack of analysis and application of the article 3 case law referred to above. I set the decision of the First-tier Tribunal aside. The following directions shall apply to the future management of this appeal:

(a) The decision of the First-tier Tribunal shall be set aside. The findings in relation to IQ's nationality, date of birth, possession of a valid passport, place of origin in Gaza, rejection of the core of his claim as a result of adverse credibility findings, personal qualifications, presence of family in Gaza, and immigration history, shall be preserved findings.

(b) List for a resumed hearing before Upper Tribunal Judge Hanson sitting at North Shields on the first available date after 1 September 2020. Time estimate three hours.

(c) IQ shall file with the Upper Tribunal and serve upon the Secretary of State's representative and up to date are consolidated, indexed and paginated bundle containing all the documentary evidence upon which he seeks to rely in support of his appeal….Witness statements in the bundle must be signed, dated, contain a declaration of truth and shall stand as the evidence in chief of the maker who shall be made available for the purposes of cross-examination (if any) and re-examination only.

(d) an Arabic interpreter shall be provided by the Upper Tribunal."

4. An application was made to set aside this decision under Rule 42(2)(c) of the Tribunal Procedure (Upper Tribunal) Rules 2008. Directions were subsequently issued by Mr Justice Swift on 7 April 2021 following a hearing at Field House on 31 March 2021.

5. Further directions were issued by Upper Tribunal Judge Blundell on 22 April 2021. This matter and linked appeals were listed before Mr Justice Swift and Upper Tribunal Judge Blundell initially on 10 and 11 June 2021 with a resumed hearing on 29 June 2021. The Upper Tribunal issued a reported judgement <u>EP (Albania) & Ors (rule 34 decisions; setting aside)</u> [2021] UKUT 233 (IAC).

6. The Upper Tribunal concluded between paragraphs [86] and [90] of <u>EP</u> the application to set aside the Rule 34 decision (in this particular case) should be refused. The Tribunal stated:

"86. In this case too, the Secretary of State was the appellant in the error of law proceedings. The Tribunal gave directions on 7 May 2020 in the form we have set out above at paragraph 55. The Secretary of State responded, late, on 5 June 2020 stating only that she intended to rely on the matters set out in her Notice of Appeal. IQ did not respond to the request for submissions on the rule 34 issue. The submission to us was that IQ *"received a clear view that a provisional view had been taken"*. That was entirely correct; the directions stated the Tribunal's provisional view. But that was no reason not to comply with direction 3

if there was an objection to be made. It was also submitted that the directions put IQ under pressure of time. If that was why the submissions invited by direction 3 could not be made the proper course would have been to request an extension of time.

87. The reasons for the rule 34 decision are at paragraphs 3 - 9 of the Tribunal's decision promulgated on 28 July 2020. The conclusion was reached by reference to consideration of the overriding objective and the assessment that a no-hearing determination of the issues in the appeal would not prejudice the parties: see the decision at paragraph 9. We do not consider this conclusion rested on any incorrect legal premise or any incorrect application of the relevant legal principles.

88. The submission made to us was that the reasons did not refer to the judgment of the Supreme Court in *R (Osborn) v Parole Board* [2014] AC 1115 (an authority which considered the Parole Board's practice of taking decisions on whether to release tariff-expired life sentence prisoners without a hearing), and that the Tribunal's decision could have *"benefitted from oral advocacy"*. We do not consider either of these matters carries weight. The Parole Board function scrutinised by the Supreme Court in *Osborn* is very different to the function of the Upper Tribunal when determining error of law appeals. Failure to refer to the *Osborn* judgment, of itself, says little as to whether a Tribunal has directed itself properly when taking a rule 34 decision. The submission that the Upper Tribunal may have been assisted by oral advocacy is directed to the Tribunal's reasons on the article 3 ECHR issue in the appeal: see paragraphs 27 - 31. We do not consider there is anything inherently wrong with the Tribunal's reasoning on this issue. It addresses matters that had been canvassed in the pleadings. The submission to the effect that had there been a hearing something might have been said on behalf of IQ that might have influenced the Tribunal is speculative and more importantly does not point to the existence of procedural irregularity.

89. The one specific point advanced was that at paragraph 69 of its decision the First-tier Tribunal recorded that, in her decision letter, the Secretary of State had not sought to advance any internal relocation argument. That is correct. The decision letter did not rely on the possibility of internal relocation, only the conclusion that on the facts IQ was not at risk of article 3 ill-treatment. The submission is to the effect that, at paragraphs 24 to 25 of its decision, the Upper Tribunal appears to have allowed the Secretary of State to submit that the First-tier Tribunal had erred in failing to consider the possibility that IQ should relocate. This, it is submitted, was wrong. We tend to agree. However, these matters do not reveal procedural irregularity. Notwithstanding the reasons in the decision letter, the internal relocation issue was part of the Secretary of State's Grounds of Appeal (Notice of Appeal, Ground 1, second paragraph); it was therefore a matter of which IQ was on notice, and which he did have the opportunity to address in his submissions on the error of law appeal. In any event, this point - that any attempt now by the Secretary of State to rely on internal relocation is inconsistent with her decision letter - is one that IQ will be at liberty to raise when the Upper Tribunal comes to remake the decision on the appeal on its merits (this having been

retained by the Upper Tribunal and not remitted to the First-tier Tribunal).

90. For these reasons the rule 43 application in this case is refused."

7. Directions were given as to the future disposal of this appeal and, on 10 November 2021, a Transfer Order was issued by Principal Resident Judge Kopieczek releasing the case from UTJ Hanson.

8. This case was listed for a final hearing on 3 February2022 but for a variety of reasons, including the unavailability of interpreters, the case was adjourned and ultimately transferred to Field House for a final hearing on the above date.

9. It had been agreed the Appellant would give evidence to explain both the origin of the new evidence, his article 3 argument and what support he has from his family.

10. It was also agreed that the Appellant would call expert evidence and Dr Hasan Hafidh was listed to give expert evidence addressing the risk on return and whether the general humanitarian situation in Gaza breached article 3 ECHR taking into consideration the Appellant's medical situation.

11. The Respondent had previously conceded that, if the Appellant was at risk in his home area from Hamas, then the Appellant would succeed with his appeal as internal relocation to the West Bank would not be possible in this appeal.

THE APPELLANT'S EVIDENCE

12. The Appellant adopted his witness statement dated 19 May 2022 and gave oral evidence. He maintained the account that had been given to the FTTJ.

13. He confirmed his family continued to live in Rafah which was near to the Egyptian border. His family consisted of his mother, sister, two brothers and their families. They all lived in the same property which consisted of two bedrooms and one living room. This was the house that he himself had been living in before he came to the United Kingdom.

14. He stated he was claiming refugee status because of his experiences with Hamas prior to him fleeing Gaza together with the general situation in Gaza since Hamas took full control of the area.

15. The Appellant maintained he was attacked, injured and threatened by Hamas in 2001 because he refused to allow Hamas to use the family home to monitor the Israelis and to plant explosives and to fire object at the Israelis and he also had placed a white flag and light outside the family home.

16. The Appellant went into hiding and to avoid Hamas he moved from house to house. He was able to avoid detection because at that time Hamas did not control the whole area. He left Gaza in or around December 2021 after obtaining a student visa and fled to Algeria. Whilst in Algeria Hamas continued to ask about his whereabouts but eventually, in early 2003, the Appellant decided to return to Gaza because:

    a. Hamas had locally stopped asking about him.

    b. His home area was under the control Abu-Mazen and Hamas did not exert the level of control that they now do.

    c. The Appellant wanted to return to Gaza for personal reasons (his brother was going to be married).

17. Two weeks after he returned home, Hamas came to his home and threatened his mother. He also stated he too was verbally threatened by Hamas supporters on another occasion.

18. The Appellant went into hiding in Khan Younis until he was able to cross the border with Egypt before he eventually settled in Algeria.

19. In 2007, the Appellant's brothers were interrogated by Hamas and they were asked about the Appellant's whereabouts and who he worked with. In 2016 Hamas summonsed the Appellant's brother, Mohammed, and told him they knew that the Appellant was now living in Algeria because they had become aware of his whereabouts in Algeria after he had argued with a Hamas supporter who in turn passed information about him to Hamas in Gaza.

20. In 2020 the Appellant's brother received the three summonses which have now been submitted in evidence. An advocate, instructed by the Appellant's brother, had obtained the documents. Evidence from the advocate has been produced which confirmed the genuineness of the summonses. The Appellant stated in his oral evidence that his sister had emailed him the summonses in August 2020.

21. As a result of these summonses the Appellant maintained he would be identified at the border and were he to return it was reasonably likely he would be arrested, killed or forced to work for Hamas. The risk he faced was not only because of his previous activities but also because he would be suspected of being an Israeli or foreign spy given the length of time he had been outside of Gaza.

22. Due to the control Hamas had had over Gaza since 2007, the Appellant would be unable to obtain any protection or support and even if he was not detained by Hamas he would struggle to find accommodation or employment. Whilst he had previously worked in Gaza this was temporary work on his cousin's stall when he was not attending college. Since 2007 neither of his brothers had been able to hold down secure employment as only those people who supported Hamas were able to find regular work.

He stated his family would be unable to support him even if they were willing to do so.

23. The Appellant has a master's degree in electrical engineering which would make him an attractive worker for Hamas to the extent that even if he could safely return, he would be forced to work for them.

24. As for his previous immigration history, the Appellant accepted that he had been documented by the authorities in Spain, but he had not remained there because he went to stay with family in Belgium. The Belgian authorities would not process his claim for asylum because he was registered as having a claim in Spain. He had ultimately come to this country because the United Kingdom was a dream for people from the Middle East albeit it was difficult to travel here given it was an island.

25. Both the Appellant's brothers provided witness statements supporting the Appellant's account and explaining their involvement with Hamas since the Appellant had been out of the country.

26. Reliance was also placed on a statement from Imad Abuzarifa who said he had met the Appellant in 2002. In 2012 he went to Gaza to visit his family and was approached by Hamas and asked about the Appellant's whereabouts.

MR TUFAN'S SUBMISSIONS

27. Mr Tufan submitted the FTTJ had found the Appellant to lack credibility and those findings were preserved by UTJ Hanson. He submitted we had to ask ourselves whether the new evidence (from the Appellant's brothers, the warrants and supporting statements etc) enabled the Tribunal to revisit UTJ Hanson's preserved findings.

28. Mr Tufan submitted the three summonses did not why the Appellant had to attend for an interview. The absence of such information undermined their reliability and consequently did not support the Appellant's case. None of the documents were examined by Dr George and given he has prepared over 650 authentication reports it was perplexing he had not provided a report about these documents.

29. Mr Tufan submitted it lacked credibility that something that happened 20 years would be of any interest to the authorities, and he invited us to apply no weight to the documents. As regards his protection claim Mr Tufan reminded us that France had rejected his claim and he invited the Tribunal to dismiss the appeal on refugee grounds.

30. Regarding any Article 3/Article 15B QD claim Mr Tufan reminded us that any claim centred around conditions in the camps was a very high threshold and this had not been met. Outside the camps, Dr George said he could receive some support from UNRWA if family registered. It was now being suggested the family were not registered but no evidence of this had been adduced. The Appellant had worked in various jobs and

whilst he had some health issues, Mr Tufan submitted these would not prevent him working especially as he had a home to return to and he had family to assist him.

31. The July 2022 CPIN report identified the available help. The Appellant's own expert evidence accepted there was help albeit not to preferable standards. Para 2.4.12 referred to the fact most people have access to water. Expert says 96% have access but water not drinkable. Para 2.4.13 referred to facilities available. HS (Palestinian – return to Gaza) Palestinian Territories CG [2011] UKUT 124 (IAC) remains valid to this date and there is no reason to depart from this case.

32. Whilst he has some medical conditions as outlined in the medical report and records Mr Tufan submitted that most of her views were not within her level of expertise. The Appellant's own expert evidence confirmed basic medical support is available albeit there are issues during periods of conflict.

MR LERMER'S SUBMISSIONS

33. Mr Lermer adopted his two skeleton arguments and acknowledged the starting point was the FTTJ's decision. The key finding in the FTTJ's decision was from paragraph [52] onwards where the FTTJ found the Appellant had not told the truth.

34. Although his overall credibility had been rejected, Mr Lermer submitted the FTTJ's decision was a balanced judgement and the new evidence was evidence capable of swinging the previous decision in the Appellant's favour. Whilst Mr Tufan had argued the authorities would not be interested in him after twenty years, Mr Lermer submitted the white flag incident was not the totality of his claim. There were incidents in October 2001 when the Appellant confronted Hamas and an incident around 10-14 days later when he was attacked. He also relied on the fact Hamas used the family home for their own aims.

35. The Tribunal now had the summonses and whilst Mr Tufan challenged why the offence was not mentioned there was no country evidence to suggest such information would be in the documents. The summonses were supported by statements from the advocate in Gaza and a statement from his instructing solicitors. Mr Lermer submitted the original finding could be revisited.

36. If the Tribunal did not accept his protection claim, Mr Lermer submitted there were expert reports from Dr George, Dr Joffey and Dr Hafidh which would enable the Tribunal to consider whether article 3 ECHR/ Article 15B was breached. These expert reports detailed about what conditions he would face in Gaza especially as he was not registered with UNRWA.

37. Whilst the Respondent relied on the July 2022 CPIN, Mr Lermer submitted that many of the conclusions were based on a survey carried out 2021. Dr Hafidh had identified multiple failings of that report. There were also inconsistencies within the CPIN report itself and in particular he identified that paragraphs 11.1.5, 12.1.1 and 12.1.2 were inconsistent with 11.1.6/11.1.11, 12.1 and 12.1.3 of the same report. Given what Dr Hafidh has said the CPIN could not be relied on.

DISCUSSION AND FINDINGS

38. The Appellant's protection appeal fell to be considered against the background of the FTTJ's findings which had been preserved by UTJ Hanson. Following the principles of Devaseelan, we have considered all of the new evidence including the oral evidence. Any Article 3 and 8 ECHR claims must also be considered against the country guidance decision of HS, the latest CPIN report and the expert evidence that has been submitted in this appeal.

39. UTJ Hanson had stated "… the findings in relation to IQ's nationality, date of birth, possession of a valid passport, place of origin in Gaza, rejection of the core of his claim as a result of adverse credibility findings, personal qualifications, presence of family in Gaza, and immigration history, shall be preserved findings."

40. Mr Lermer submitted to us there was a plethora of new evidence that previously was not available that would enable us to make fresh findings on all or some of those matters.

41. The Appellant's claim effectively was repeated before us but was now supported by the arrest warrants/notices, supporting statement from advocate in Gaza and a statement from the Appellant's instructing solicitor.

42. Mr Tufan had submitted to us that little weight should be attached to the warrants as they had not been authenticated. He argued that Mr George, a country expert, should have been asked by the Appellant's representatives to examine the documents especially as Mr George stated at paragraph [32] of his first report that he had prepared some 650 separate authentication reports. Mr Lermer's response to this argument was that firstly authentication evidence had been produced from the advocate in Gaza whose details had been authenticated by his instructing solicitors and secondly much of what Mr Tufan submitted was without any foundation as he had not produced any country evidence to support what he was attempting to argue.

43. In order to assess whether the new evidence is capable of allowing us to revisit the original findings it is necessary for us to look at the new evidence.

44. The Appellant's representatives had submitted in evidence four warrants dated 3 September 2007, 28 January,2020, 9 February 2020 and 18

February 2020 (located in Supplemental bundle). The warrants can be summarised as follows:

a. The first warrant required the Appellant’s brothers to attend at the police centre and was served on 3 September 2007 at 11.30am.

b. The second warrant required the Appellant to attend at the police centre and was served on 2 February 2020 at 11am.

c. The third warrant required the Appellant to attend at the police centre at Al Ramal at 13:30 on 16 February 2020.

d. The fourth warrant required the Appellant to attend at the police centre at Al Ramal at 10am on 19 February 2020

45. To support the authenticity of these documents we were invited to consider a letter, dated 3 May 2020, addressed to advocate Mr Dagga. This letter referred to these four warrants and to the fact the Appellant had first been required to present himself before the security services on 3 September 2007 and that the Appellant had now been on a watch list since February 2020. A letter from the advocate, Mr Dagga, confirmed what steps he had taken to investigate the summonses and explained that as the Appellant had not responded to the 2020 summonses his name would be circulated to border control. If he was stopped at border control Mr Dagga suggested the Appellant would be arrested for failing to attend his interview. The Appellant’s representative had provided a letter outlining how she had contacted Mr Dagga to confirm the authenticity of the summonses and provided evidence confirming Mr Dagga was who he claimed to be.

46. Mr Tufan submitted the summonses should have contained information about what the Appellant or his brothers were wanted for, but as Mr Lermer had argued he had produced no country evidence to support this argument.

47. We agreed with Mr Lermer’s submission that there was no supporting evidence to support Mr Tufan’s submission on this issue but there was the following evidence to support Mr Lermer’s submission that weight could be attached to these documents:

a. There were statements from the Appellant’s brothers explaining how the documents were obtained.

b. There was a statement from the advocate in Gaza explaining how he was instructed to obtain the documents.

c. There was a supporting statement from the Appellant’s solicitor confirming her role in the obtaining of the evidence and the authenticity of the advocate.

48. We therefore accepted the summonses/warrants were genuine and supported the Appellant's claim that he remained of interest to the authorities in Gaza.

49. The fact these documents existed then had to be looked at against what could happen if the Appellant returned to Gaza. We had to consider all the country evidence to identify what could happen to the Appellant were he to return to Gaza.

50. Dr George confirmed that after general elections in January 2006 Hamas swept to power and have controlled Gaza since June 2007. Both Israel and Egypt have imposed a blockade on the Gaza strip that persists to this day. Dr George highlighted in his reports incidents of violence and provided history of events that occurred in Gaza particularly the conflict between the Israelis and Hamas. Dr George stated that if the Appellant was the subject of an arrest warrant issued by Hamas he would be detained on entry to the Gaza Strip.

51. Professor Joffe also reported that Hamas is now more profoundly in charge of events in the Gaza Strip and the Palestinian Authority has lost considerable local ground as a result of its decision to cancel the elections that were due to be held.

52. This was confirmed also in the July 2022 CPIN report at paragraph 2.4.7 and at paragraph 6.1.1 it is reported that Hamas took full control of the Gaza Strip illegally in June 2007 and has been operating as the de facto authority [since then], establishing its own security force and at paragraph 6.1.2 a US Congressional Research Service paper of October 2021 stated the US State Department and some NGOs have raised concerns about possible Hamas violations of the rule of law and civil liberties. At paragraph 16.1.4 the USSD human rights reports covering events in 2020 noted Palestinians returning to Gaza were regularly subject to Hamas interrogations regarding their activities in Israel, the West Bank, and abroad.

53. Having considered the totality of the evidence we found that were the Appellant returned then given the control Hamas has over the whole of the Gaza Strip together with the fact returning Palestinians were regularly subject to interrogation by Hamas there would be a real risk of this Appellant facing issues with border control upon his return and it was reasonably likely he would be stopped, detained and interrogated by Hamas.

54. Mr Lermer submitted that this new evidence would enable us to revisit the FTTJ's previous negative findings which were:

a. It lacked credibility that Hamas would not use their property for their own activities.

b. It was not credible the Appellant's family would risk his safety by asking him to return for his brother's wedding in 2003 if the threats continued.

c. He gave inconsistent evidence about what contact he had with Hamas when he returned in 2003.

d. Communication between the Appellant's brother and Hamas after the confrontation in Algeria to some extent undermined the Appellant's credibility.

e. The Appellant gave inconsistent evidence about whether he had continued to criticise Hamas.

f. He failed to mention in his screening interview the threats from Hamas.

g. There was not a reasonable degree of likelihood that the Appellant had given a truthful account of events that led him to leave Gaza and subsequently Algeria.

55. Given our acceptance of the evidence about the summonses and the problems the Appellant would face upon return we concluded the new evidence did enable us to revisit the FTTJ's negative findings.

56. Whilst not all those findings would be affected by the new evidence, we accept that it did enable us to revisit some of those findings and we find the balance described by the FTTJ in paragraph [52] of his decision then swung in the Appellant's favour.

57. We accepted that were the Appellant returned he would face a real risk of persecution from Hamas and there would be no protection available given Hamas controlled the whole of the Gaza Strip and internal relocation either within the Gaza Strip or to the West Bank would not be possible. Given our findings on his Refugee Claim we also accepted, applying the same facts, that given the risks the Appellant would face on return there would also be breach of Article 3 ECHR.

58. We were also invited to consider whether the prevailing conditions in the Gaza Strip would breach Article 3 ECHR or Article 15B of the Qualification Directive.

59. Mr Lermer relied on the expert reports and evidence of Dr George, Professor Joffe and Dr Hafidh. Mr Tufan primarily relied on the July 2022 CPIN report. Any assessment of this evidence must be viewed against the findings by the Tribunal in the Country Guidance decision of HS. In that case the Tribunal concluded that conditions in Gaza were not such as to amount to persecution or breach of the human rights of returnees or place them in need of international protection. Whilst the Tribunal considered this case in 2010 we were satisfied that many of the issues highlighted in that case remain today.

60. Dr George provided two reports dated 25 April 2022 and 3 October 2022 and his findings included the following:

a. In the period 1 January 2008 to 2 April 2022 5,987 Palestinians were killed in hostilities with Israel. Of these 5,298 died in the Gaza Strip and of those, 2,757 were classified by the UN as ‘civilians’ and 1,228 as women and children. In the period 24 January 2008 to 29 March 2022 265 Israelis died. 3,147 of the Palestinian fatalities in Gaza resulted from Israeli aerial bombing. OCHA records that in the period 1 January 2008 to 4 April 2022 136,348 Palestinians were wounded, of whom 73,883 were in the Gaza Strip. From 6 January 2008 to 31 March 2022 5,884 Israelis were wounded.

b. The dire humanitarian situation in the Gaza Strip has been aggravated by the protracted tensions between Hamas and the Fatah-dominated Palestinian National Authority, based in Ramallah in the West Bank. There had been a significant increase in poverty rates in the Gaza strip which were up from 38.8% in 2011 to 53% by the end of 2017 with more than 53.5% reporting their main income was social assistance. The unemployment rate in the Gaza Strip for males in 2020, the latest year for which this data is available, was 42.1 per cent which was a decrease of almost 10% since 2018.

c. Most households received electricity for 3-4 hours a day, access to clean water had not improved and the health system has come under significant and increased strain. In 2020 and 2021 electricity was available for an average of only 13 hours daily

d. In Gaza, UNRWA provides access to primary health care for 1.3 million people, access to education for more than a quarter of a million children and food assistance to nearly one million refugees living in poverty. Mitigating actions taken by the UN and partners in the international community resulted in some improvements to the humanitarian situation and living conditions.

e. Palestinian society is centred on extended families and clans, and that individuals depend very heavily on these family networks for their financial wellbeing, their social lives and their welfare needs. The extent, if any, to which the Appellant’s family would be able to support him would depend on their, and his, specific circumstances. Humanitarian and economic conditions in the Gaza Strip are dire. Unless his family are well-off and well-connected, it is likely that they would not be able to offer the Appellant more than the most basic shelter and support. He would be unable to find work but he would receive limited support from UNRWA assuming his family was registered with

UNRWA. The issue of family support would then be very marginal given he would be detained upon return.

f. Basic medical treatment is available in the Gaza Strip, from the Hamas-controlled authorities, from the UN Relief and Works Agency for Palestine Refugees (UNRWA) and from foreign NGOs. There is high demand for such basic services as are available, and some medicines and treatments are not available. Psychological and psychiatric disorders are widespread, and treatment facilities and services are limited.

g. The Gaza Strip has only one psychiatric hospital - the government-run Nasser Psychiatric Hospital - in Gaza City, whose services are free, although there is a network of local clinics operated by NGOs that offer a range of free mental health services.

h. If the Appellant was returned he would encounter very poor humanitarian and security conditions.

i. With regard to the Home Office’s assertion that the July 2022 CPIN contains information that is so recent as to render the April 2022 Expert Report of little value, Dr George noted that the CPIN, at its Paragraph 3.1.2, stated that it relied on a range of data from the Palestinian Central Bureau of Statistics (PCBS), and particularly a ‘multi-sectoral humanitarian needs assessment (MSNA) house-hold survey conducted in July 2021…which was conducted on behalf of the UN Office for the Coordination of Humanitarian Affairs (UNOCHA)’. Dr George’s April 2022 Expert Report includes information more recent than the data from the July 2021 MSNA upon which the CPIN is largely based.

j. The Home Office’s general position on conditions in the Gaza Strip is contained in the CPIN’s Paragraph 2.4.12. Nothing in the July 2022 CPIN contradicts the information concerning food security and access to water in Dr George’s April 2022 Expert Report. Dr George agreed with the CPIN assertion that the large majority of people were able to meet their basic food needs and access water for drinking and sanitation. However, significant numbers of Gazans do not enjoy clean water supplies or effective sanitation.

k. Electricity rates fluctuate and do not meet demand, the supply of electricity has increased with the Gaza Strip currently having no electricity for twelve hours per day compared to seventeen hours in 2017 and 2018.

l. Paragraph 2.4.12 of the July 2022 CPIN noted that in the Gaza Strip there was ‘a shortage of adequate housing although reconstruction efforts for properties destroyed/damaged during conflict were ongoing’.

61. There was also a report from Professor Joffe dated 12 April 2022 and his findings included the following:

a. Circumstances in the Gaza Strip have continued to worsen over the past two years, a development that would have an immediate relevance for the Appellant. Following the conflict with the Israelis in May 2021 Israel once again restricted the entry of humanitarian goods, particularly ‘dual-use’ items. X-ray and communications equipment.

b. By the end of September 2020 there had been only one month’s supply of 47 percent of essential medicines left in stock in Gaza. This declined to 42 per cent in the first nine months of 2021. Israel also placed further restrictions on fishing off-shore which were maintained in the following year, and reduced electricity supplies to the Strip temporarily. Electricity supply, which had run at twelve hours a day in the first nine months of 2020, now declined to just three hours a day for the next three weeks. Although the levels were subsequently raised, deliveries remained below eleven hours a day until October 2021.

c. These restrictions had particularly severe consequences on health care water provision and sewage disposal, so that Gaza’s groundwater supply was construed to be ‘almost completely unfit’ for human consumption by the United Nation’s Office for the Coordination of Humanitarian Affairs.

d. Food supply is also complicated and liable to unexpected disruption, particularly after periods of conflict, as occurred in the first five months of 2021. Gazans are generally classed as being moderately-to-severely food insecure by the United Nations and most families are in receipt of food aid. UNRWA provides twenty-two healthcare facilities in the Gaza Strip. The situation in the Gaza Strip has worsened over the past two years. there is no authoritative engagement with Hamas as a legitimate political authority.

62. The Tribunal also had the benefit of a report from Dr Hafidh and he gave oral evidence to us over a video link. He had primarily been asked to comment on the PBCS Report that was referred to in the July 2022 CPIN Report. He stated:

a. The PCBS report operated under several limitations which undermined the overall credibility of the report. Another limiting factor of the report was the lack of focusing on regional ‘hotspots’ where the access to provisions is severely limited and impacted upon, instead these were more generalised, especially regarding East Jerusalem, and therefore it did not properly represent the specific experiences of individuals in those regional hotspots.

b. He was unable to say whether Rafah was as precarious as Gaza city. It was difficult to say what the actual position was given the turbulent nature of what was happening on the ground. During periods of conflict the Israelis clamped down on items that could be viewed as having a dual purpose.

c. Access to humanitarian provisions, such as food, clean drinking water, sanitation, shelter, healthcare, and education are not adequately accessible in Gaza. He stated most of the water in Gaza was not drinkable and that the population had to spend money on drinkable water. Israeli control of imported goods also further compounds the energy crisis in Gaza amidst the frequent energy shortages hospitals have to employ expensive fuel generators that cost $2,000 to operate per hour, and even these have become dilapidated and require imparted spare parts which the Israeli authorities prevent the health services access to.

d. Those registered with UNRWA can access medical provisions but the supply is controlled by Israel which meant there are periods when supplies will not be available. Other matters, such as the Ukraine/Russia crisis, can also impact in the food chain. Unless a person is registered with UNRWA then it would now be hard to register. Dr Hafidh believed a family had to be registered in 1967 and to access this support evidence of registration would be needed.

e. Basic medical treatment was available but during a crisis that may not be the case as supplies would be interrupted.

f. The May 2021 conflict did an extensive amount of damage that directly hindered Palestinian's access to humanitarian provisions, primarily healthcare, in ways that the PCBS report simply did not record. Aside from medical provisions being impacted and made inaccessible, the May 2021 violence also resulted in the banning of the entry of the fuel needed to operate Gaza's power plant, reducing access and availability of electricity which itself was further hindered by attacks on vital electricity infrastructure in the attacks. Escalations in conflict and consistent damaging to electricity infrastructure mean that supply is not meeting the demand of the Gaza strip, further preventing economic growth of development.

g. According to the Home office's own research in the CPIN, the May 2021 conflict displaced Palestinians who had already been previously displaced, exacerbated the housing needs from the 2014 war which had yet to be addressed, and destroyed, damaged, or rendered completely unhabitable up to 68,755 houses or housing units. The conflict not only created further damage to the availability and adequacy of housing but also

prevented the rebuilding attempts to address damage from previous conflict.

h. The PCBS report, owing to its short data collection time frame and the other limitations previously addressed, did not capture the true extent of how humanitarian provisions were hindered by the May 2021 conflict.

63. Mr Lermer made a number of submissions to us about conditions in the Gaza Strip and pointed to some inconsistencies within the CPIN Report itself. Mr Tufan highlighted the fact there were services available and submitted that the conditions did not breach Article 3 ECHR or Article 15B of the Qualification Directive.

64. Dr George had given evidence in HS and as part of his evidence he told the Tribunal about the problems that were facing people in Gaza. For instance, he stated the water supply and the sewerage in Gaza were in a very poor condition and this was partly a consequence of neglect over many years but significantly because of the military action in 2008 to 2009 and the effect of the blockade. The quality of water, for example, would depend partly on the area of the Gaza Strip that one was in. Generally, water supplies in the area were not good.

65. Fast forward to today and effectively there are similar issues with water supplies and conditions in the Gaza Strip due to the blockade imposed by both Israel and Egypt and the ongoing conflict between Israel and Hamas. We were not satisfied the evidence now relied on demonstrated that the conditions in the Gaza Strip had deteriorated from those considered by the Tribunal in HS.

66. The Tribunal in HS considered whether the humanitarian conditions in Gaza were so serious that a claim for humanitarian protection or under Article 3 or Article 8 of the Human Rights Convention would succeed. The Tribunal had evidence before it on that occasion of lack of running water, lack of building materials, the discharge of 80 million litres of raw sewerage being discharged daily into the environment, the threat of the wall being built on the Gaza/Egyptian border, the level of unemployment constituting 41.5% of Gaza's workforce, restrictions on what was allowed into Gaza, level of aid available from other countries and the availability of medical support.

67. Whilst we acknowledge the difficult conditions facing the inhabitants of Gaza, we did not find the current conditions had deteriorated from those considered by the Tribunal in HS. Moreover, there was evidence that in certain areas there had been an improvement albeit the actual level of improvement remained a matter of some debate as evidenced by Mr Lermer's submissions.

68. Having considered the totality of the evidence we were not persuaded that the general conditions in the Gaza Strip had deteriorated to such an extent that we should depart from the findings in HS. We found the

conditions in the Gaza Strip did not breach either Article 15B of the Qualification Directive or Article 3 ECHR.

69. Mr Lermer had also submitted that the Appellant's medical conditions and the availability of medication in the Gaza Strip meant that if the Appellant was returned there it would breach his human rights. He also relied on a letter from UNRWA which said the Appellant himself was not registered with them. The letter however made no comment on the position of his parents.

70. A nurse from the Foundations Practice provided a printout of his medical records and listed the Appellant's current medical complaints as follows:

a. Treated for TB after registering with the surgery since December 2017. He was placed on a three-month course of anti-tuberculosis chemo-prophylactic treatment.

b. Referred to the musculoskeletal team due to knee pain and he was recommended to have physiotherapy and exercise.

c. Diagnosed on 18 March 2022 with T2 diabetes Mellites and given medication and referred to diabetic podiatry and ophthalmology for regular screening. He had stopped taking his medication. If his diabetes was not monitored it could result in vision issues, feet issues, heart attack, stroke, nerve damage, kidney issues and early death.

d. Had been prescribed medication for his mental health but he had stopped taking his medication. He had agreed to recommence his medication.

71. The nurse had written in her report that the medications he had been prescribed were possibly obtainable in Palestine albeit mental health services in Palestine are among the most under-resourced fields of healthcare provision. Mental health crisis teams were not accessible in Palestine and so if he were returned the Appellant could act on his intrusive thoughts of DSH/suicide.

72. Mr Tufan pointed to the fact that the nurse was not an expert on the Gaza Strip and the availability of medication in that area. Her views on the availability of medication should, in his view, be disregarded. We agreed with Mr Tufan's submission.

73. The nurse has no expertise in matters relating to the Gaza Strip and whilst she was able to set out his ailments she was not in a position to say what treatment was or was not available in the Gaza Strip.

74. Paragraph 14.1.5 and 14.1.6 of the July 2022 CPIN provided information about the availability of health facilities. The PEA report from 2021 recorded, "under Hamas government, the health system in Gaza seems to have "undergone a period of expansion"… This includes increasing the

number of hospital beds and beds in special care units, appointing new professional, clinical, and administrative staff… Hamas also “established the Palestinian Medical board, which coordinates and oversees medical education and training”. At paragraph 14.1.6 it was reported, “a partnership of 70 local and international organisations, and the UN – in a bulletin covering the period October to December 2021 - reported that there were 29 hospitals (all of which were fully functioning) and 149 primary healthcare clinics (of which 148 were fully functioning)”.

75. We also had the country reports and in particular the evidence of Dr Hafidh to consider.

76. Any medical claim must be considered in line with the case law of AM Zimbabwe [2020] UKSC 17, which affirmed the Article 3 medical threshold as that held in Paposhvili v Belgium [2017] Imm AR 867.

77. Following this case, it is Home Office policy to accept that a claimant’s Article 3 medical rights would be breached by removal to their country of origin if there are substantial grounds for believing that person would face a real risk of being exposed to a serious, rapid and irreversible decline in your state of health resulting in intense suffering or a significant reduction in life expectancy as a result of the absence of appropriate medical treatment or lack of access to such treatment.

78. In applying the ruling in AM (Zimbabwe) we did not accept the Appellant had provided evidence showing substantial grounds for believing that he faced a real risk of being exposed to a serious, rapid and irreversible decline in his health resulting in intense suffering or a significant reduction in life expectancy upon his return to the Gaza Strip. Having considered the totality of the expert evidence on this issue we found that the Appellant had failed to demonstrate there was an absence of appropriate treatment in the Gaza Strip or that he would lack the ability to access treatment upon return.

79. We also considered the same evidence when considering his claim under article 8 ECHR and given our findings about the availability of medication we concluded that his medical issues did not highlight very significant obstacles upon his return.

NOTICE OF DECISION

The previous decision was set aside. We have remade the decision. We allow the appeal under the Refugee Convention and on Article 3 ECHR grounds but dismiss his appeal on all other grounds.

SP ALIS

Deputy Judge of the Upper Tribunal

Immigration and Asylum Chamber

06 March 2023