



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

Appeal Number: AA/04510/2011

THE IMMIGRATION ACTS

Heard at Manchester

**Determination
Promulgated**

On 23 January 2014

Before

**UPPER TRIBUNAL JUDGE CLIVE LANE
DESIGNATED JUDGE MCCLURE**

Between

ISSA ABUISSA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: *Ms Faryl*, instructed by Lei Dat & Baig, Solicitors
For the Respondent: *Mr McVeety*, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Issa Abuissa, was born on 18 July 1970 and is a male citizen of Palestine (Occupied Territories). He had appealed to the First-tier Tribunal against the decision of the respondent dated 10 December 2010 to remove him from the United Kingdom as an illegal entrant under

paragraphs 9 - 10 of the Immigration and Asylum Act 1999. The First-tier Tribunal (Judge Kanagaratnam), in a determination promulgated on 24 May 2011, dismissed the appeal. The appellant appealed to the Upper Tribunal.

2. By a decision dated 18 June 2012, Designated Judge McClure set aside the First-tier Tribunal determination giving his reasons as follows:

REASONS FOR THE DECISION THAT THERE IS AN ERROR OF LAW IN THE DETERMINATION:

- 1 The grounds of appeal raise two issues. The first relates to the factual findings made by the judge. Central to a consideration of the appellant's claim to asylum is the assessment as to the circumstances and reasons why the appellant left Palestine and specifically the Gaza Strip.
- 2 At paragraph 12 of the determination the judge at several points makes reference to the fact that the appellant had not spoken of a confession prior to the latter stages of the processing of his claim to asylum and his later statements. The judge has in part based his assessment of the credibility of the appellant's account on the fact that the appellant had failed to mention previously anything relating to a confession or anything arising therefrom.
- 3 It is clear however at the respondent's bundle screening interview part 4.2 that the appellant has mentioned being tortured and signing blank sheets of paper which would be filled in with a confession. Whilst it is correct to say that the appellant does not mention anything otherwise arising therefrom it does appear that he refers to a confession.
- 4 As the assessment of credibility is based in part on the fact that the appellant had not mentioned a confession previously, in the light of the evidence set out the assessment of credibility and the adverse findings of fact will have to be looked at again and the whole of the appellant's account considered again.
- 5 The second issue raised by appellant's representative is the fact that no consideration has been given to article 1D and the cases of *Nawras Bolbol v Hungary* 2010 EUECJ C-31-09 and *EI-Ali v SSHD* [2002] EWCA Civ 1103.
- 6 There is documentation that indicates that the appellant was being provided protection and was registered as refugee with UNWRA. It is asserted that in the circumstances of the appellant the provisions of Article 1D are engaged and that the appellant should automatically be recognised as a refugee.
- 7 Whilst that issue was not raised before the judge and the judge cannot be criticised for not having dealt with it, it is clearly an issue that arises on the papers as the documentation to substantiate that the appellant had been registered with UNWRA had been included in the original bundle.

- 8 There is clearly an issue of the law as to whether and not the protection provided by UNWRA had ceased and whether it has ceased by the appellant having to leave the area where the protection was provided by reason of the risk of persecution or the risk of harm or whether the appellant had voluntarily left the protection provided. In the latter circumstances the argument being that the protection provided had not ceased but rather the appellant no longer wished to avail himself of the protection. In the former however there is clearly an argument as to whether in all the circumstances the risk of persecution arising within the area where the protection is provided in the appellant is excluded from being a refugee by Article 1D or whether consistent with the case law cited the appellant is automatically to be recognised as refugee.
- 9 Accordingly there are arguable errors of law within the determination and the matter will have to be heard afresh.

Decision

10. The Tribunal therefore concludes that, given the material error of law described above, the matter will be reheard.

3. The burden of proof in the appeal is on the appellant and the standard of proof is whether there is a real risk the appellant will suffer, respectively, persecution or treatment contrary to the ECHR (in particular, Articles 2 and 3) if he is returned to Palestine (Occupied Territories).
4. The appellant gave oral evidence before the Upper Tribunal adopting his witness statement and supplementary witness statements as his evidence-in-chief. The appellant claims that in 1990 he was arrested by the Israeli forces for an act of violence against a military vehicle and that he was sentenced to two months' imprisonment at the Negev Prison. During that time, he claims that he was tortured but when he was released he left Gaza in 1990 and has not returned. He has spent a number of years living in the Philippines where members of his close family continue to reside. He travelled to the United Kingdom in 2009 and claims that he cannot be safely readmitted to Palestine (Occupied Territories) because he will be identified as an individual with a criminal record and will suffer ill-treatment in consequence. The appellant claims that he obtained a passport in 2009 with the assistance of a cousin in Palestine but he has denied that it is a valid Palestinian passport (he claims to have bribed his cousin, who worked at the Palestinian Department of the Interior, which issued passports, in order to acquire it) and he also maintains that the ID card which he brought with him to the United Kingdom is not valid [see supplementary statement of 17 October 2013, paragraph 19].
5. The respondent's refusal letter is dated 10 December 2010. The letter records the documents before the author of the letter at [8]. Those documents included a witness statement of the appellant dated 29 November 2010 which Mr McVeety, for the respondent, told us has been lost. We understand from the appellant that he had drafted this statement himself without the assistance of lawyers. At [18], the respondent "accepted that [the appellant] was detained for two months in Gaza Strip

along with thousands of other civilians.” Beyond that concession, the respondent did not accept any part of the appellant’s claim. The appellant claims that, upon being released by Israelis in 1990, he was forced to sign a blank document and to agree to work for the Israelis as a spy. The appellant “did not wish to betray my own people and bring shame to my family” so he made arrangements with his father to leave Gaza. It was the appellant’s contention that “in order to require a passport legally, the requirements are a valid ID card and no criminal record on file.” It is on this basis that the appellant asserts that the passport which he used to enter the United Kingdom was not validly issued to him.

6. The hearing of the Upper Tribunal was primarily concerned with evidence surrounding the issue to the appellant of a passport and his subsequent dealings, both directly and through third parties, with the Palestinian authority as represented in the United Kingdom. These issues had arisen following the hearing in the Upper Tribunal in Manchester on 23 October when we issued the following directions:

The parties shall, no later than 4.00 pm on 30 October 2013, file at the Upper Tribunal and serve upon each other a consent form signed by the appellant which shall permit the respondent to contact the Palestinian Authority regarding the validity of the appellant’s passport; his attempts to obtain a passport in the past; the existence of any bar which would prevent the appellant obtaining a passport; the existence of any record of the appellant at the Palestinian Population Registry.

The appellant shall, no later than 4.00pm on 30 October 2013, file at the Upper Tribunal and serve on the respondent a detailed witness statement in which he shall explain how he obtained his passport and giving details of any attempts he may have made in the past to obtain a passport.

The appellant shall, no later than 4.00pm on 30 October 2013, file at the Upper Tribunal and serve on the respondent (i) statements of witnesses and (ii) any other documentary evidence which may explain how the letter of the Palestinian Diplomatic Mission dated 17 October 2013 came into the possession of the appellant.

The respondent shall, no later than 4.00pm on 27 November 2013, file at the Upper Tribunal and serve on the appellant any documentary evidence upon which she may seek to rely arising from any enquiries she may make of the Palestinian Diplomatic Mission and the Palestinian Authority.

The respondent shall, no later than 4.00pm on 27 November 2013, notify the Upper Tribunal and the appellant’s representative whether she wishes the witnesses referred to in paragraph (3) above to attend the final hearing to be cross examined.

The appellant shall, no later than 4.00pm on 18 December 2013, file at the Upper Tribunal and serve on the respondent any further written evidence upon which he seeks to rely.

Both parties shall, no later than 4.00pm on 30 December 2013, file at the Upper Tribunal and serve on each other consolidated bundles of documents.

The appeals shall be listed before Upper Tribunal Judge Clive Lane and Designated Judge McClure at Manchester on **23 January 2014 at 10.00am** (4 hours allowed).

7. The appellant's passport was issued by the Palestinian authorities on 23 July 2009 and will expire on 22 July 2014. The appellant has produced in evidence two letters concerning the passport. The first letter from the Palestinian Diplomatic Mission is dated 17 October 2013 and is addressed to "to whom it may concern". The letter reads as follows:

The Palestinian Mission on behalf of the Palestinian authority has conducted a search of our records of Palestinian passport holders.

We can find no record of a passport issued in the name of Issa Abuissa, the passport number 2424831 is not a valid passport number, it is not in our records.

We hope this answers your enquiry. If you require further information please do not hesitate to contact us.

8. The letter is signed "Ahmed Al-Mussa, Consular Section." We shall refer to this letter as the "17 October letter".
9. The second letter, dated 23 October 2013, also has the letter heading of the State of Palestine (Palestinian Mission to the UK). Both letters bear the address 5 Galena Road, Hammersmith, London W6 0LT. We shall refer to the second letter hereafter as the "23 October letter." The text of the 23 October letter is also very brief:

This is to confirm that according to Oslo Agreement between Israel and PLO, the Palestinian passport that you are holding does not entitle you to have free entry to the Palestinian territories, as you are not a resident neither in Gaza Strip nor in West Bank and do not possess the new resident Palestinian ID card (*sic*)

The letter is signed "Ahmed Mansur, Consular Department".

10. We have seen copies of a series of emails dated December 2013 and January 2014 that passed between the Palestinian Mission in the UK and Ms Sarah Marsh, a Senior Home Office Presenting Officer in Manchester. The contents of the mails may be summarised as follows: (i) The Palestinian Mission confirmed unequivocally that the 17 October 2013 letter is not genuine and was not written by any officer of the Palestinian authorities in the United Kingdom. (ii) The 23 October letter is genuine and was written by Mr Mansur of the Palestinian Mission. (iii) The 23 October letter was issued on the basis of the details of the passport which the appellant had presented to the Palestinian authority. However, those details are not the same as the passport details subsequently sent to the authority by the respondent. (iv) When checks were made by the Palestinian authority regarding the passport details forwarded by the respondent it was revealed that the appellant's passport "is an authentic Palestinian passport which was registered in the Palestinian authority database" [see email to Sarah Marsh, 10 January 2013].
11. The appellant claims that the 17 October letter was not obtained by him but was provided to a Mr David Williams with the assistance of a Mr Nasri

Al Barghouti, who the appellant claims is the president of the Palestinian community in Liverpool. The appellant claims that he used the assistance of these individuals to obtain information from the Palestinian authority because he was “too afraid of making any contact with the Palestinian authorities myself.” [Supplementary witness statement 17 January 2014, paragraph 3]. The appellant has produced copies of text messages between himself and Mr Barghouti. Neither Mr Williams nor Mr Al Barghouti attended before the Upper Tribunal to be cross-examined. The appellant told us that both these individuals no longer wish to be involved in any way with his appeal.

12. Following an anxious and careful examination of all the evidence, we do not find that the appellant is a witness of truth. We have reached that conclusion for the following reasons. First, we are not satisfied that the account which he has given concerning the acquisition of his passport and his subsequent dealings both directly and through third parties with the Palestinian authority is true or accurate. The appellant has sought to rely on the 17 October letter which both parties now agree is a forgery. He has sought to distance himself from that letter by claiming that Mr Williams and Mr Al Barghouti, rather than he himself, were responsible for obtaining it. There is a brief witness statement and an email from Mr Williams which is dated 10 January 2014 and appears to have been sent in response to an enquiry made by the appellant’s solicitor. The enquiry sought to ascertain how Mr Williams had obtained the 17 October letter. The response is not exactly clear:

As far as I know I have had no contact with the PA. As an Arts Professional I have had and expect still to have contact with a Palestinian Mission to the United Kingdom on a number of cultural projects that have been held in Liverpool as part of the annual Liverpool Arabic Arts Festival and the Biennial, I can list them if needed. I have also been involved with the Mission and Labour Friends of Palestine when the ambassador spoke in Liverpool at the labour conference and the launch of the Jack Jones Trust at the House of Commons. I receive from time to time emails from the embassy usually press releases or information about events. When I received the email in question I printed it out realising it was for Issa and brought it to your office as you are his solicitor. I did not keep it, I have a backlog of 12,000 emails so delete them in bulk, sorry. As for 23 January, unfortunately I am working on a three day shoot so I can’t make it.

13. We are left entirely in the dark by this email and the brief witness statement as to how or why Mr Williams may have sought or obtained a letter which is now known to be a forgery. There was no written evidence at all from Mr Al Barghouti. All that we do know is that the letter is a forgery and that the appellant sought to rely upon it. In the absence of any satisfactory explanation from the appellant himself or two witnesses who have not been submitted for cross examination, we have no doubt that the appellant himself knew that the document which he has attempted to use in support of his appeal is a forged document. We find that to be an act which very severely diminishes the appellant’s credibility as a witness. We find that his credibility is further damaged by the readiness with which he

abandoned his apparent scruples as regards making direct contact with the Palestinian authorities in the United Kingdom; indeed, we find that he showed so little reluctance in agreeing for the respondent to make enquiries (including disclosing his home address) because he never had any genuine fear of those authorities.

14. Secondly, we have considered the 23 October letter. We know that that letter is genuine but we also know that the passport details given to its author, Mr Mansur, and upon which he based the contents of his letter were not accurate. In the absence of any other credible explanation, we find that those details were provided to Mr Mansur by the appellant. It is clear to us that the appellant has been faced with the problem of attempting to show to the Tribunal that he possesses a false passport when, in fact, his passport is genuine. In that context, we have no doubt at all that the appellant has deliberately sought to mislead Mr Mansur by providing false details to him. When the appellant's actual passport details were provided to the Palestinian Mission it did not hesitate in confirming that the passport is genuine.
15. We find that the appellant's conduct in his dealings with the Palestinian authority in the United Kingdom are such that we are unable to consider any part of his account as reliable. We find that the appellant did not obtain his passport by way of bribery. We find in consequence that any record of the appellant's detention in 1990 was either not present on the databases consulted by the issuing authority or had never been or was no longer considered to be of such importance as to justify denying the appellant a passport. We reject the appellant's claim that, upon release from detention, he was forced to sign a blank confession or that any attempt was made to recruit him as an Israeli spy. In the light of the fact that a passport has been issued to the appellant relatively recently, we do not find it reasonably likely that the appellant's detention in 1990 would come to the attention of Israeli or Palestinian officials at the borders of the Occupied Territories, or, if the information is known to those officials, it would frustrate the appellant's entry into those territories; we emphasise that, if the fact of the detention had ever been a serious problem for the appellant, then we find that he would never have been issued with a genuine passport in the first instance.
16. Bringing together those findings in order to create a factual matrix upon which to base our analysis, we find that this appellant is a 43 year old Palestinian male who was arrested and briefly detained in 1990 in Gaza. We find that no attempt was made to force him to sign a blank confession or to compel him to work for the Israelis as a spy. He will present to the border authorities in Palestine as an individual holding a genuine and extant Palestinian passport and who has no criminal or other security record which would give rise to any suspicion that he is anything other than a law abiding, expatriate Palestinian returning to his homeland.
17. We have to consider whether such an individual, displaying the characteristics which we find he possesses, may safely return to Palestine

(Occupied Territories) at the present time. As at the date of the Upper Tribunal hearing, he has a genuine passport. The 23 October letter, although genuine, is of limited use in determining whether the appellant would be admitted to the Occupied Territories because it is, as the author, Mr Mansur, has stated, based on false details. In order to determine whether the appellant could be readmitted to the Occupied Territories, we have had regard to country guidance and other jurisprudence together with the background material provided to us. In *HS (Palestinian – return to Gaza) Palestinian territories CG* [2011] UKUT 124 (IAC) the Upper Tribunal found that:

Palestinians from Gaza with passports (expired passports can be renewed via a straightforward procedure) are unlikely to experience problems in obtaining and, if necessary getting extensions of, visas from the Egyptian authorities to enter Egypt and cross into Gaza via the Rafah Crossing.

We note also the observations of the court in *El Kott and Others* [2012] EUECJ C-364/11 [77]:

It should be added that Article 11(f) of Directive 2004/83, read in conjunction with Article 14(1) thereof, must be interpreted as meaning that the person concerned ceases to be a refugee if he is able to return to the UNRWA area of operations in which he was formerly habitually resident because the circumstances which led to that person qualifying as a refugee no longer exist.

18. The appellant told us that he had made enquires about obtaining a new ID card which he claims he would need in addition to his passport in order to gain admission to the Occupied Territories. Given that we find that this appellant has very little credibility, we do not accept that he has made any such enquiries. We find that the appellant has failed to discharge the burden of proving that he would be unable to obtain an ID card or any other documentation which he may require in addition to his passport in order to pass into the Occupied Territories through Egypt. In the light of *HS*, we find that this appellant would be able to return to the Occupied Territories without facing any facing any risk of persecution or ill-treatment. It follows that his asylum Article 3 ECHR appeals must be dismissed. Having regard to same factual matrix which we have described above, we find also that the appellant is not entitled to a grant of humanitarian protection.
19. Ms Faryl submitted that the appellant should also be entitled to remain in the United Kingdom under Article 8 ECHR (private life). We have, however, been given no evidence whatever as to the nature and quality of the private life which the appellant enjoys in the United Kingdom although we accept he may have developed some private life here during the four years of his residence. However, we find that the appellant's removal in pursuit of the legitimate aim of maintaining immigration control would not cause a disproportionate interference with his private life, the essentials elements of which he may seek to establish elsewhere. We note also that

his close family members live in the Philippines. The Article 8 ECHR appeal is dismissed.

DECISION

20. The determination of the First-tier Tribunal having been set aside, we have remade the decision. This appeal is dismissed on asylum grounds. This appeal is dismissed on human rights grounds. This appellant is not entitled to a grant of humanitarian protection.

Signed

Date 24 January 2014

Upper Tribunal Judge Clive Lane