IAC-FH-CK-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/00110/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 1st December 2015	**On 5th January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

M A E
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Ms J Isherwood, Home Office Presenting Officer
For the Respondent: Mr P Draycott, Counsel instructed by Paragon Law

DECISION AND REASONS
EXTEMPORE

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.

1. The Secretary of State is the Appellant and appeals with permission a decision of the First-tier Tribunal promulgated on 6th July 2015. The grounds of the application assert that the judge's reasoning is unclear, principally because it is not apparent on the face of the decision the basis upon which the judge has allowed the appeal. The Secretary of State was the respondent in the First-tier Tribunal. I am going to refer to the parties as they were known before the First-tier Tribunal for my convenience.

2. The Appellant had appealed on asylum and Articles 2 and 3 ECHR grounds and, in the alternative, on humanitarian protection grounds. The judge sets out clearly at paragraph 9 of the decision the self-directions in respect of the alternative provisions of humanitarian protection.

3. The judge explains that many of the matters that had been in contest at the time of the decision had fallen away, in particular that the Respondent had conceded that the Appellant was in fact a Palestinian national.

4. The judge finds in favour of the Appellant on the issue as to whether or not he is on the Israeli-controlled population register, finding at paragraph 19 that he is not so registered.

5. The judge explains why the difficulties for the Appellant in returning to Gaza and the discrimination, as identified in the country guidance case of SH do not entitle the Appellant to protection under the Refugee Convention. Indeed the judge notes at paragraph 24 that in reality the Appellant has never claimed that he has been singled out by governmental or non-governmental bodies for persecution. The judge then identifies that the force of the Appellant's case or, as he describes it, the "real thrust of his appeal" is the position in respect of the humanitarian situation in Gaza, in other words, the humanitarian protection position.

6. The judge notes that the country guidance case of SH does deal with the general position in terms of humanitarian protection but indicates that the staleness of the country guidance case, being seven or eight years old at the time of the judge's hearing, and also the current position in the country, mean that it is appropriate to look outside of the country guidance cases. The judge sets out at [25], [26] and [27] the evidence that he considers to be determinative of the humanitarian protection position. The grounds do not take any specific issue with any of the judge's findings set out in those paragraphs. There is no evidence adduced or any particularisation to the point that any of the matters raised therein had been incorrectly assessed or are in fact mistaken.

7. The judge specifically refers to the detail of the Appellant's own life in the context of his having left Gaza as an orphaned minor, and having no family, and no support network, and finds that, in combination with the matters set out in the expert evidence of Dr George which has not been

significantly challenged, in the round, the evidence has established the humanitarian protection argument.

8. Insofar as the Respondent's grounds assert that the Appellant had failed to establish indiscriminate violence the grounds are misconceived because it is quite clear that the judge is looking to the other provision in respect of humanitarian protection. As the case of SH makes clear, it is right for the judge to take into account not only the general circumstances but the absence of family support in making that assessment and in that regard I note in particular that very similar issues are considered at 113 and also 117 of SH , although in that case a different view was taken.

9. Nothing in the judge's approach reveals any misdirected so as to found legal error. I note that Mr Draycott has referred me to the case of Sufi and Elmi and in particular the issue of state involvement in the humanitarian position, by which I mean the Israeli State involvement in the occupied territory. Whilst the judge has not referred to that decision, the approach that has been taken is entirely consistent with that case law.

10. The grounds complain that the judge has found against the Appellant in the context of Article 3, and posed the question as to why it is, in that context, that the judge found in favour of in terms of humanitarian protection. I find that that is a misconception because in reading the decision what is clear is that the judge, having found that the Refugee Convention did not afford protection, moved on to consider humanitarian protection, and in that context there was no finding in respect of Article 3 adverse to the Appellant, so as to give rise to internal incoherence in the judge's reasoning as argued.

11. In respect of the issue as to whether or not, having found that the Appellant would be at real risk of serious harm on return, he could nonetheless relocate to the West Bank, the grounds complain that the inaccessibility of the West Bank does not make the relocation unduly harsh in the context of the test set out in Januzi. The grant of permission gives an answer to the Respondent in regard to that matter, where at paragraph 5 Judge Nicholson points out that a person cannot reasonably be expected to relocate to another area which is safe if, as the judge found in this case, he cannot get there. Nothing has been advanced before me by Ms Isherwood to assert that the position set out in the grant of permission is in error.

Notice of Decision

12. It follows for all the reasons that I have set out that I find that the judge has not made any material error in concluding that the Appellant is entitled to humanitarian protection and accordingly the decision of the First-tier Tribunal stands.

Signed Date

Deputy Upper Tribunal Judge Davidge