Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/03004/2019**

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 9 October 2019	**On 6 November 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

M A A S A K
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R. Sharif, Fountain Solicitors
For the Respondent: Ms H. Aboni, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a stateless Palestinian, born and brought up in Lebanon. He was born on 7.3.91. He studied in the UK from 20.10.16 to 25.5.18, obtaining a Masters degree in Structural Mechanics, following which he returned to Lebanon, where he claims he was detained and tortured by Hezbollah in July 2018 and released only after having agreed to work as a spy. The Appellant then fled from Lebanon to the UK and claimed asylum on the same day- 28 July 2018. His application was refused in a decision dated 22 March 2019.

2. He appealed against this decision and his appeal came before Tribunal Judge Parkes for hearing on 17 June 2019. In a decision

promulgated on 28 June 2019, his appeal was dismissed. The Appellant sought permission to appeal, in time, on the basis that the Judge had materially erred in law:

(i) in applying to wrong standard of proof in considering whether or not the Appellant's account was "improbable";

(ii) in failing to provide any reasoning as to why weight should not be attached to the evidence of AK at [21] and in placing undue weight on the absence of supporting evidence from Israel at [20], [22] and [24];

(iii) in failing to make any findings in respect of the Appellant's claim pursuant to paragraph 276ADE of the Immigration Rules and Article 8 of ECHR;

(iv) in failing to give adequate reasoning at [19] for not accepting that the Appellant would lose the support of UNRWA assistance should he be returned to Lebanon and failed to adequately address his claim in light of the API: Article 1D – UNRWA at pages 281-291 of AB; and

(v) in failing at [20] to adequately explain why the facebook posts produced by the Appellant cannot be relied upon as corroborative evidence and at [22] in failing to attach appropriate weight to the impact of the fact the Appellant has relatives in Israel on the risk to the Appellant from Hezbollah.

3. Permission to appeal was granted by First tier Tribunal Judge Scott Baker in a decision dated 1 August 2019 on the basis that:

"3. The judge has arguably made insufficient findings on the totality of the evidence and arguably has applied a standard of proof that is incorrect and too high, noting the reliance by the judge at [12], [13], [20], [22], [25] and [29] of there being no further evidence. Despite the assertion the judge had referred to the API at [17]-[18] of the decision and found that the appellant would not lose the support from UNWRA but fails to give adequate reasons for these findings. In particular, the judge accepted at [19] that the basis of the substantive account could be one factor for losing the protection but arguably fails to make sufficient findings on this core issue.

4. Arguably within the body of the determination there is a failure to engage with the totality of the evidence on the grounds under the Refugee Convention, humanitarian protection and Article 8. Such failure arguably amounts to errors of law."

Hearing

4. At the hearing before the Upper Tribunal, Mr Sharif adopted the grounds as set out in the grounds of appeal. In respect of ground 1, he submitted that the Judge has applied a higher standard of proof than that required: see [26] where the Judge finds that the Appellant's account of ill-treatment is not improbable, however, this is a higher standard of proof. Mr Sharif submitted that consequently all the findings the Judge makes in this determination in light of having that in the forefront of his mind are tainted by applying a higher standard. The Judge says it is not clear why only the Appellant would be of interest at [26] however, in so doing the Judge is looking for something in respect of which the Appellant is not able to assist further.

5. In respect of Ground 2, which refers to the Judge's finding at [21] of the determination in relation to A K, the Appellant's uncle who lives in Belgium, the Judge makes no finding as to his evidence and whether he rejected it in its entirety or whether parts of it are accepted. No reasons are given as to why the evidence is not accepted. The Judge then at [22] and [24] is contending that the Appellant has been unable to obtain supporting evidence from Israel but has failed to assess the evidence that was before him and is seeking to look for other evidence without having regard to the evidence that was before him eg facebook which he found does not prove that the relatives actually live in Israel.

6. In respect of Ground 3, there is no mention in the decision and reasons of paragraph 276ADE of the Immigration Rules and this has not been considered by the Judge, despite being pleaded in the skeleton argument at some length and the Appellant is entitled to know why his appeal has been dismissed. There is a cursory mention at [32] "*the Appellant cannot meet the requirements of the Immigration Rules for LTR and there are no compelling circumstances that would justify a grant of leave under article 8 outside the rules"* however, Mr Sharif submitted that this was insufficient.

7. In respect of Ground 4. Mr Sharif submitted that the Judge at [19] notes one of the reasons for the cessation of UNRWA support *viz* ceasing education, but fails to take account of the fact that there are other reasons: see page 290 of AB which sets out factors where UNRWA support can be lost, taken from the judgment of the CJEU in *El Kott* C-364/11 eg. threat to life, armed conflict etc and practical, legal or safety barriers. Mr Sharif drew attention to AB 284, an extract from the Home Office API guidance of 9.5.16 in respect of Article 1D, which makes clear that UNRWA only supports registered refugees.

8. With regard to Ground 5 and the evidence of relatives living in Israel. The Judge does not give any reasons at [20] why he formed the view that the facebook posts cannot be relied upon as corroborative evidence absent further evidence to support the claim

that the facebook posts are from the Appellant's relatives or that they originate from individuals living in Israel. Mr Sharif submitted that the Judge has not considered the evidence before him adequately.

9. I pointed out to Mr Sharif the Judge's finding at [22] that facebook profiles do not assist where people actually are and thus absent further evidence this did not prove that the Appellant has relatives in Israel. Mr Sharif responded that a person could be anywhere in the world and a facebook account could be registered anywhere in the world but this is not the issue but rather where the communication is happening and who has access to it. He submitted that is that it is not the location that is putting the Appellant at risk but the content. Mr Sharif further submitted that the Judge has failed to go on to make a finding as to whether the Appellant has relatives in Israel would cause him to have a problem with Hezbollah as claimed. There were letters submitted from 14 June which showed that the Lebanese security services anticipate activities inside Lebanon and Israelis residing in Palestine arranging meetings: see SB under cover letter of 14 June which the Judge refers to at [10]. Mr Sharif submitted that the five grounds of appeal show that the Judge has erred in law and the errors are material.

10. In her submissions, Ms Aboni sought to defend the Judge's decision. She submitted that he had directed himself appropriately and given adequate reasons for his conclusions.

11. In respect of the first ground of appeal, Ms Aboni submitted that there was no material error of law with regard to the standard of proof applied. Whilst the Judge does say that the account of ill-treatment is not improbable there is no material error as this is consistent with background evidence. When the Judge applied the facts as claimed by the Appellant he gives adequate reasons for rejecting the core of his claim that he did not suffer torture and ill-treatment as claimed

12. As regards Ground 2 and the witness evidence of A K at [21] the Appellant claims to have established contact via facebook with relatives and he found at [22] the Appellant may have relatives in Israel but even if he is in contact with them there is nothing on the evidence to support his claim that there are facebook posts that would put him at risk as facebook posts in themselves do not establish risk.

13. As regards Ground 3 and article 8, Ms Aboni accepted that whilst the Judge does not specifically consider paragraph 276ADE of the Rules that this was not material, given that the Appellant only had limited leave to remain with no expectation of being able to remain and can return to his family in Lebanon

14. With regard to Ground 4 and the issue of UNRWA support, the Judge considered the Appellant did have that protection. The Home office policy document indicates that if a person has previously had that protection it is for them to establish protection has been lost and nothing else has been put forward as a reason for losing protection. The Appellant has not relied on other reasons and it was open to the Judge to find he would still have that protection and so would not be entitled to refugee protection.

15. In respect of Ground 5, at [20] the Judge could reasonably have expected further evidence of residence there eg letters from relatives in Israel. Ms Aboni submitted that there was adequate consideration of contact with relatives in Israel and the Judge had given adequate reasons for finding the Appellant has not had problems with Hezbollah and would not be at risk on return. She submitted that there was no material error in the Judge's decision and reasons.

16. In reply, Mr Sharif submitted that if one looks at the totality of the evidence before the Judge the findings are insufficient; the Judge was applying the wrong standard of proof and seeking further evidence and not making findings in the round and that these errors are material.

17. I announced that I found material errors in the decision and reasons of First tier Tribunal Judge Parkes in relation to grounds 2 and 3 and I reserved my decision in respect of the remaining grounds on the basis that I had not yet reached a concluded view of the other grounds so far.

Findings and reasons

18. I find that Ground 2 of the grounds of appeal is made out in that the evidence of the Appellant's uncle as set out in his statement served on 14.6.19 and dated 16.5.19 is that he travelled in September 2017 to Israel to meet his relatives in North Israel in Khawleid village and elsewhere; that when he was there the Appellant spoke to him and their relatives through WhatsApp and facebook. Whilst the Judge records the content of this evidence at [21] he makes no finding upon it. This is a material error given that the Judge went on at [22] to find that there was no written supporting evidence from Israel to confirm the Appellant's claims to have been in contact with relatives there, when his uncle's evidence is corroborative of the Appellant's claims in that respect.

19. I find that Ground 1 of the grounds of appeal is also made out in requiring further corroboration directly from Israeli relatives as well as the Appellant's own account and that of his uncle, particularly given the Judge also accepted at [22] that "*it would not be surprising that the Appellant could have relatives in Israel*" which would, I find, indicate that a higher standard of proof was being

applied than a reasonable degree of likelihood or serious possibility. Whilst at [26] the Judge's use of the phrase "*the Appellant's account of ill-treatment is not in itself, improbable*" in that particular context, I find that this is also indicative of his approach to the evidence as a whole, given that at [20], [22], [23], [24], [25] and [29] the Judge reasoning is predicated on an absence of evidence he would have wished to have seen, rather than making findings on the evidence that was actually before him.

20. In respect of Ground 3, whilst I note Ms Aboni's submission that any error in failing to engage with paragraph 276ADE(vi) or Article 8 may not be material, given that the Appellant only had limited leave to remain, the fact remains that no consideration at all has been given to paragraph 276ADE(vi), despite the fact that it was addressed in the refusal decision and expressly raised in the grounds of appeal.

21. In respect of Ground 4, I find that this would only be made out if the Appellant's substantive account is accepted and that he would be unable to access UNRWA protection due to threats to his life, physical integrity, security or freedom. I find that, albeit briefly, this is referred to by the Judge at [18] and thus I find no error in respect of this ground of appeal.

22. In respect of Ground 5 of the grounds of appeal, I find that this is made out for the reasons given at [19] above and the Judge erred in failing to treat the facebook posts as potentially corroborative, absent further supporting evidence from relatives in Israel. I further find that the Judge erred in failing to either refer to or make any finding in respect of the evidence in the supplementary bundle *viz* a translation of an article in Arabic concerning the arrests and issuing of arrest warrants against two individuals accused of conspiring with Israelis through facebook on 25.9.18.

Decision

23. I find material errors of law in the decision and reasons of First tier Tribunal Judge Parkes for the reasons set out above. I set that decision aside and remit the appeal for a hearing *de novo* before the First tier Tribunal in Birmingham.

Rebecca Chapman

Deputy Upper Tribunal Judge Chapman 4 November 2019