



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

Appeal Number: PA/13080/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 17 January 2019**

**Decision & Reasons Promulgated  
On 05 February 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SHAERF**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**And**

**AB 1  
(ANONYMITY DIRECTION CONTINUED)**

Respondent

**Representation:**

For the Appellant: Mr S Whitwell of the Specialist Appeals Team

For the Respondent: Ms H Foot of Counsel instructed by Wilson Solicitors LLP

**Anonymity Direction**

**Unless and until a tribunal or court directs otherwise the Respondent is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings**

**DECISION AND REASONS**

**The Respondent**

1. The Respondent (the Applicant) is a Palestinian born in 1990 from the Burj el-Shemali refugee camp in Lebanon, identified by the Respondent as a stateless person. On 28 March 2017 he arrived by air. On 12 June 2017 he claimed humanitarian protection because he feared persecution on return by Hezbollah for refusing to fight for them in Syria.

### **The SSHD's decision**

2. On 5 December 2017, the Appellant (the SSHD) refused the Applicant's application for international surrogate protection. The Respondent did not accept the Appellant's claim to have undergone two sessions of military training Hezbollah and considered the Applicant would not be at risk on return to Lebanon. The Applicant's claim that his removal would breach the State's obligations to respect his private life protected by Article 8 of the European Convention was rejected on the basis that he had been in the United Kingdom for only some six months and there were no exceptional circumstances warranting a grant of leave outside the Immigration Rules.

### **Proceedings in the First-tier Tribunal**

3. The Applicant appealed and by a decision promulgated on 29 August 2018 Judge of the First-tier Tribunal Davey having regard to background evidence and the expert country report from Ms S Laizer found the Applicant's account was consistent and credible. He allowed the appeal on asylum grounds.
4. The SSHD sought permission to appeal on the basis the Judge had failed to identify any cogent background evidence, despite an expert report, to support a conclusion the Applicant on return would be at risk as a perceived deserter from Hezbollah. The Applicant had made clear to Hezbollah that he had no intention of joining. The Judge had recorded but made no finding on the witness statement from the Applicant's brother.
5. On 19 September 2018 Judge of the First-tier Tribunal Andrew refused the SSHD permission to appeal. She found the grounds amounted to no more than a disagreement with the Judge who had made findings about the Applicant's brother. The application was renewed to the Upper Tribunal and on 3 December 2018 Deputy Upper Tribunal Judge Chalkley granted permission stating only that "I believe that the grounds arguable".

### **The Upper Tribunal Proceedings**

#### **Submissions for the SSHD**

6. At the start Mr Whitwell confirmed the SSHD did not intend to proceed with the grounds identified at paragraphs 4 and 5 of the application to the First-tier Tribunal for permission to appeal. These grounds were that the Judge had arguably erred because the Applicant's own evidence was that he had made clear to Hezbollah he had no intention of joining them and that the Judge had noted but made no finding on the evidence of the other

witness. It was appropriate to withdraw these grounds since they did not take account of what the Applicant had stated at paragraphs 7ff of his witness statement and the Judge's findings at paragraph 7 of his decision.

7. Mr Whitwell handed up extracts from the documents mentioned in two of the footnotes referred to in paragraphs (iii)-(v) on page 12 of Ms Laizer's report.
8. He accepted that the SSHD's reasons letter did not broadly address the issue of risk on return and the SSHD had been represented by externally instructed Counsel at the hearing in the First-tier Tribunal who had not taken or pursued this issue at the hearing. Nevertheless, in protection claims, risk on return was always a relevant factor. He submitted that it would be in the interests of Hezbollah to publicise what happened to deserters since it would discourage people from deserting.
9. He referred to paragraph 9 of the Judge's decision. He had not explained what grounds he had for the conclusions he reached about the treatment of deserters by Hezbollah. Ms Laizer's report did not detail the treatment of deserters: it dealt with Hezbollah's treatment of Iraqi citizens as illustrated by the extract from the sources cited by Ms Laizer in her footnotes, mentioned above at paragraph 7.
10. These matters disclosed errors of law and the decision should be set aside.

### **Submissions for the Applicant**

11. Ms Foot referred to paragraph 3 of the Procedure Rule 24 response for the Applicant. The SSHD's grounds amounted to no more than a disagreement with the Judge and disclosed no arguable error of law. The SSHD sought to quibble with the evidence which had not been put or argued before the Judge.
12. It was accepted that there had been no formal concession that if the Applicant were found credible then he would be at risk on return. Nevertheless, the SSHD had argued the case before the Judge on the issue of the limited risk identified at paragraph 34 of the Reasons Letter.
13. The basis for the SSHD's appeal is a challenge to the reasons given by the Judge which had a high threshold to cross. Referred me to paragraphs 22-25 of the decision in *VV (grounds of appeal) Lithuania [2016] UKUT 00053 (IAC)*, especially paragraph 24, namely: -

"... Even if the matter relates to a substantial issue or principal controversial issue, it is essential for an appellant to show either that the judge has simply failed to resolve that dispute, in other words there is a gap in the reasoning on that point, or alternatively, that even though the issue has been dealt with, the reasoning is so unclear that the Tribunal is satisfied that it *may well conceal* a public law ground of challenge ... such adverse inferences will not readily be drawn."

She submitted that the risk to the Applicant on return was not a substantial principal controversial issue and so there was a lower duty on the Judge to consider it as described in paragraph 23 of VV.

14. The evidential context of the appeal is that Hezbollah takes very seriously its role in the civil war in Syria. The expert report of Ms Laizer at page 12 noted that deserters were beaten and it was sufficient for the Judge to rely on this. The items referred to in the footnotes describing Hezbollah's treatment of Iraqi civilians showed of what abuses they were capable. The Judge was entitled to rely on what the expert report stated at the foot of page 11 and on pages 12-13. There was sufficient contextual evidence to support the Judge's finding the Applicant would likely be at risk on return.

### **Error of Law Consideration**

15. At the end of the hearing I stated that I found there was no error of law in the decision of the First-tier Tribunal for reasons which would follow in this written decision and which I now give.
16. The Judge accepted the expert report of Ms Laizer. Paragraph 6 at pages 10-12 of the report explains why the Appellant on return was likely to be seen as a security risk and possibly even as a suspected spy or supporter of an opposition party and so be at risk. It is important to keep in mind that the Applicant had voluntarily "joined up" to receive military training, in his mind, to prepare him to fight the Israelis which the Judge had addressed at paragraph 11 of his decision. While it might have been helpful for the Judge to have referred to specific paragraphs in Ms Laizer's report, it is evident from his decision that he had given it careful consideration and his conclusions reflect this.
17. The thrust of the reasons letter is entirely focused on the Applicant's claim to have undergone military training with Hezbollah and to have refused their order that he fight in Syria. Paragraphs 33-36 of the reasons letter are clear on this. There was no suggestion that the SSHD had sought to amend the reasons letter at the hearing before the Judge to widen the basis for the SSHD's decision. The SSHD had made clear that the refusal of the Applicant's claim for subsidiary protection was narrowly based and there was no obligation on Applicant to answer any other case or on the Judge to consider it on a wider basis.
18. The decision of the First-tier Tribunal does not contain any material error of law and the SSHD's appeal against it is dismissed.

### **Anonymity**

19. The First-tier Tribunal decision contains an anonymity direction although it gives no reason why it is proportionate to the need for transparency in the Tribunal's administration of justice. This is a subsidiary protection appeal and on that basis and because the matter was not addressed hearing before me I propose to continue the anonymity direction.

**SUMMARY OF DECISION**

**The decision of the First-tier Tribunal does not contain an error of law and shall stand.**

**The effect is that SSHD's appeal is dismissed and the Applicant's appeal is successful.**

**Anonymity direction continued.**

Signed/Official Crest

Date 22. i. 2019

Designated Judge Shaerf  
A Deputy Judge of the Upper Tribunal