Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03035/2019

THE IMMIGRATION ACTS

Heard at Field House by Microsoft Teams On 28 June 2021	**Decision & Reasons Promulgated On 12 July 2021**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

A A (PALESTINE)
[ANONYMITY ORDER MADE]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Mr Stuart McTaggart of Counsel, instructed by R P Crawford & Co, solicitors
For the respondent: Ms Alexandra Everett, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity order

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) The Tribunal has ORDERED that no one shall publish or reveal the name or address of A A who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of him or of any member of his family in connection with these proceedings.

Any failure to comply with this direction could give rise to contempt of court proceedings.

Decision and reasons

1. The appellant appeals with permission from the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision on 14 March 2019 to refuse him refugee status under the 1951 Convention, humanitarian protection, or leave to remain in the United Kingdom on human rights grounds. The appellant was born in Saudi Arabia but has lived in the Palestinian Territories since 1993, when he was 7 years old, until he came to the United Kingdom in 2018.

2. The appellant has a passport in his own name, issued by 'the Palestinian Authority' in September 2014 and valid until September 2019. That is the document on which he travelled. It records that he was born in Saudi Arabia and was living in Ramallah when the passport was issued.

3. The appellant entered the United Kingdom lawfully, with a Tier 4 Student visa, on 8 September 2018, arriving first at Heathrow and then travelling on to Belfast on 9 September 2018. His asylum claim was made on 11 September 2018 and is a *sur place* claim based on information which came to him after his arrival, from his brother who is still in Gaza.

4. **Vulnerable appellant.** The appellant has mental health issues. He is a vulnerable person and is entitled to be treated appropriately, in accordance with the Joint Presidential Guidance No 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance. No adjustments were sought in this respect, save that the appellant gave evidence today from his solicitors' offices rather than his home.

5. **Mode of hearing.** The hearing today took place remotely by Microsoft Teams. Despite some initial technical difficulties, the remote hearing caused no significant problems. I am satisfied that all parties were in a quiet and private place and that the hearing was completed fairly, with the cooperation of both representatives.

Background

6. The appellant was born in the Saudi Arabia in 1986 and is 35 years old now. He is an English teacher: he qualified at Al-Aqsa University, Gaza, and went on to teach in two private schools in Gaza before coming to the United Kingdom.

7. Before coming to the United Kingdom, the appellant had twice attended teachers' demonstrations in Gaza, on 7 February 2017 and 7 February 2018. State school teachers and other government employees in Palestine were campaigning against the reduction of their salaries by Hamas. The appellant was not a state school teacher, but attended and was arrested on both occasions. In February 2017, he was charged with disturbing the stability of the country, his USB flash drives and electronic devices were confiscated, and he was released after 24 hours with a warning not to demonstrate again.

8. At some point in 2017 or 2018, shots were fired into the appellant's home and one came into his room and hit the wall. After attending the February 2018

demonstration, the appellant was arrested again, and questioned about his communications with 'foreign powers' and with the Ramallah authorities. Hamas wanted to know how the communication was organised. They used sleep deprivation, withholding of food, dousing him in cold water and removing blankets, but the appellant had nothing to tell them. He was charged again with destabilising the Hamas government and also with communicating with the Ramallah authorities. The appellant was released, after 48 hours' detention. It is unclear what became of the charges against him.

9. The appellant decided to come to the United Kingdom to study. He applied to Queen's University Belfast. He did not get an offer for the course he really wanted, but he was offered an Arts Foundation for a Masters' degree in translation, which he accepted. In the event, he never attended the course, partly because it was not the one he wanted, but also because he was suffering from depression, for which he takes a low dose of mirtazapine, an anti-depressant. The medical evidence is that he still has depression and post-traumatic stress disorder.

10. About two days after his arrival in Belfast, on 10 or 11 September 2018, the appellant heard from his brother in Gaza. When he did not attend work, the Hamas authorities had come looking for the appellant at the family home. They arrested and questioned his brother, saying that when they found the appellant they would shoot him, as they knew him to be in touch with the Ramallah authorities.

11. Following receipt of that information, on 11 September 2018, just three days after his arrival in the United Kingdom, the appellant claimed asylum. On 12 September 2018, when registration for his translation course at Queen's University Belfast opened, the appellant did not register. He has never attended the course.

Refusal letter

12. In her refusal letter of 14 March 2019, the respondent accepted that the appellant originated in the Palestinian Territories, by reason of his possession of a Palestinian Authority passport. She also accepted that the appellant's account of Hamas' control and behaviour in the Palestinian Territories was consistent with external materials. The country materials supported the appellant's account that Hamas was the *de facto* government of the occupied Palestinian Territories, and that it had strict control of the Palestinian Territories, backed by sophisticated internal security services.

13. The respondent accepted that arbitrary arrests and abuses were common, and that there was impunity for any abuses committed by the Hamas security services. The conditions of detention which the appellant described, including the seizure of his USB drives and electronic devices, were consistent with external sources. At [60-[70], the respondent set out elements of the appellant's account which were supported by the external country evidence.

14. The respondent's reasons for rejecting the credibility of the appellant's core account are given principally under the heading 'General Credibility' at [85]-[90], where the respondent placed weight on the appellant's failure to enrol in his course at Queen's

University Belfast, where he had enrolled because he could not continue translation studies in Gaza (see the asylum interview at [71]). The respondent noted that courses in English translation and advanced English translation were still offered at Al-Aqsa University, where the appellant had previously studied.

15. Elsewhere in her letter, the respondent stated that the dates provided for the demonstrations did not match the external country information available to her and that Hamas had limited impact on the education system in Gaza. She was concerned to understand why the appellant had twice been released from Hamas detention, each time on the same conditions of release, not to participate in future demonstrations and not to disturb the peace. The respondent could not understand why the appellant had not been prosecuted, or at least detained longer. She was also concerned that Hamas had not confiscated the appellant's travel documents on either occasion.

16. The respondent was surprised that Hamas became aware of the appellant's absence from his teaching job after only 4 or 5 days, questioning his brother in the week of the 6th-11th September, after the appellant had already travelled out of Gaza. The respondent considered that this would require Hamas to have been monitoring the appellant's attendance at his school from February 2018 to September 2018, but could not understand why they should do so after only two attendances at demonstrations.

17. The respondent was concerned that she had been unable to verify that the demonstrations on 7 February 2017 and 7 February 2018 had taken place. She considered it surprising that the appellant had not been pursued further between the two arrests. She refused the claim and the appellant appealed to the First-tier Tribunal.

First-tier Tribunal decision

18. As the decision of the First-tier Tribunal has been set aside, the only relevant matters in that decision are any record of oral evidence given by the appellant. Unfortunately, it is not possible to discern from First-tier Judge Fox's decision whether the evidence recorded was simply that in the appellant's statements (which I have) or whether oral evidence was received.

19. That is the basis on which this appeal came before the Upper Tribunal.

Appellant's oral evidence

20. The appellant adopted his two witness statements, the first prepared for the hearing of 3 October 2019, and the second dated 31 March 2021, bringing forward some additional evidence. The evidence in the first statement has already been summarised.

21. With his second statement, the appellant produced a copy document from the Military Justice Commission of the Permanent Military Court of the State of

Palestine, obtained by his brother and sent to him over WhatsApp at the end of April 2020. The document is dated 26 January 2020. It says this:

> "In accordance with the provisions of Title IX of the Revolutionary Procedures Act 1979, the Permanent Military Court in Gaza issued a grace order for the Defendant [personal details] of the city of Rafah and currently of unknown location.
>
> The period of ten days from today Sunday 26/01/2020 to surrender himself to the Military Judiciary – Al Shatae al Shamaly District. In the event that he does not surrender himself to justice, he will be considered a fugitive from justice and tried *in absentia*. The court ordered all members of the security forces to arrest the above-mentioned person and to hand him over to the Military Judiciary. For anyone who knows his whereabouts, they must report it otherwise they will be considered [to be] harbouring a fugitive from justice."

The document bears the seal of the State of Palestine, Military Justice Commission, twice, once with an illegible signature, and the second, signed by the Director of the Courts Department. The original of the Military Court document was not available to the Tribunal and the appellant does not have it: he received it as an image in WhatsApp, with a message from his brother (which he produces) saying 'the paper is with me'. The brother has since deleted it from the WhatsApp conversation.

22. The statements having been adopted, the appellant was tendered for cross-examination. In cross-examination, the appellant said he had no further information about the Military Court document. He had not contacted his family or his brother in Gaza since April 2020. There was a conflict raging there and it was not easy to keep in contact. He did not know whether there had in fact been a trial *in absentia*. He presumed the charge to be the same one, that of destabilising the Hamas government.

23. The appellant said that Hamas would know that he was no longer in the Palestinian Territories: that was why they said he was 'currently of unknown location' in the document. Gaza was a very small area and it was not very hard to gather information. His home city was small and it was very easy to see whether someone was missing. The appellant said his brother had been interrogated again in April 2021, as before.

24. The Hamas authorities had not known the appellant was leaving the Palestinian Territories. He used an agent to get him through the Rafah crossing. In 2018, that area was not yet under Hamas control. He did not know how the agent had arranged it; that was the agent's responsibility, and the agent had carried it out.

25. The appellant confirmed that he disagreed with Hamas.

26. There was no re-examination.

Medical evidence

27. There is no medico-legal report to assist the Tribunal. His general medical practitioner's computer records show that that the appellant was taking no regular medication when he first signed up with the practice in November 2018.

28. However, by 7 January 2019, he was experiencing 'waves of social anxiety, reduced appetite, anhedonia, 'ntlnwl or [suicidal ideation] numbness', hyper arousal in bed at night and nightmares. The history record included his having been arrested twice in Palestine, and ill treated in custody, including sleep deprivation and having cold water thrown over him. The doctor considered that post-traumatic stress disorder was a possibility. The appellant was prescribed Fluoxetine and Propranolol, and the GP notes stated that he would be referred for cognitive behavioural therapy to the mental health resource centre. Later, the Fluoxetine prescription was changed to Mirtazapine, for reasons unconnected with this case.

29. Seen on 6 February 2019, the appellant had received an appointment for cognitive behavioural therapy at the end of February. He was sleeping better but his appetite was poor. The appellant ate only oats and milk, and he sometimes went two days without eating. He felt he was getting a bit better: he had more energy and the hyper arousal had improved. He still felt on edge walking in the street. He also had a problem with his knee following a fall in 2016.

30. A letter dated 28 February 2019 from Ms Naomi Ferguson, a mental health social worker with the Belfast Health and Social Care Trust, noted that the appellant had moved around a lot: he was born in Saudi Arabia, moved to Jordan, and began living in Palestine aged 7, in the care of his father, following the breakdown of his parents' relationship. The appellant attended school in Palestine, but had no long-term friendships due to all the moving around. In Belfast, he was living in a shared house, not allowed to work, and received minimal benefits.

31. The appellant presented well, but had anxious body language and limited eye contact. He was 'a vague historian at times' and his mood was subjectively and objectively low. There were no signs or symptoms of psychosis observed or reported. The appellant complained of poor concentration and memory, panic attacks, hypervigilance and nightmares. The appellant had experienced some episodes of depersonalisation and derealisation. He was referred for 'psychoeducational input and monitoring of mood', with cognitive behavioural therapy not to be considered until his mental health and living circumstances had stabilised. The appellant was given information on post-traumatic stress disorder and low mood.

32. The remaining medical documents support the above records and add nothing of substance.

Upper Tribunal hearing

33. In oral submissions, Ms Everett relied on the refusal letter and argued that the appellant's account was not credible to the required standard for international protection claims. She accepted that the country background evidence suggested that adverse attention from Hamas following demonstrations did occur, but it was surprising that having twice been warned and released, the appellant had managed to leave Gaza at the Rafah crossing without difficulty. It was true that the Gaza strip was a small area, but that was double-edged: if the appellant were of interest to Hamas, he would have had more difficulty leaving the area.

34. As regards the Military Court document, Ms Everett said it was puzzling that there was no more recent information from the appellant's family as to whether the *in absentia* trial had occurred, and if so, what had been the outcome. With reference to *HJ (Iran)* the Tribunal should ask itself whether the appellant's anti-Hamas position was his real opinion, or an embellishment.

35. For the appellant, Mr McTaggart relied on the skeleton argument provided by his predecessor. The author, Mr Stephen Hollywood of the appellants' former solicitors Andrew Russell & Co, made the following points:

    (1) The appellant had been granted a Tier 4 visa for a Masters course in Belfast, and the right to work during the period of his studies. It was reasonable to conclude that the respondent in so doing had accepted his academic history and that he is a teacher. Further, his asylum claim placed him in a much more vulnerable financial and personal situation, which Mr Hollywood described as having 'knowingly plunged his life into uncertainty, poverty and strain over the outcome of his claim';

    (2) The appeal bundle contained press reports of a number of demonstrations, in particular, at pages 46-51, an article entitled *After the suspension of working in various ministries: A union demonstration for Gaza employees to demand their salaries* dated February 2018 and referring to non-payment of monthly salaries for government employees and to a demonstration. (The exact date in February 2018 is not given in the article, or at least, is not legible in the copy in the bundle);

    (3) The country evidence indicated that journalists' ability to report on events deemed adverse to Hamas occurring in the Gaza region is 'severely compromised': see section 2(a) of the US State Department Report for 2017 on Israel, Golan Heights, West Bank and Gaza and paragraph 13.1.1 of the respondent's December 2018 CPIN on the Occupied Palestinian Territories;

    (4) The appellant acted promptly, claiming asylum as soon as the information was received from his brother;

(5) Objective evidence of his mental health difficulties was included in the bundle and was accepted by the respondent. The appellant had not been fit enough to pursue his course; and that

(6) Overall, the only plausible explanation for the appellant's actions and his mental ill health was that he was telling the truth and was at risk in Gaza and the Occupied Territories if returned. Removal to the Palestinian Territories would also breach the United Kingdom's international obligations under Article 3 ECHR: see *MI (Palestine) v Secretary of State for the Home Department* [2018] EWCA Civ 1872.

36. In oral submissions, Mr McTaggart reminded me that the appellant entered lawfully. He had a Tier 4 visa and had paid fees to Queen's University Belfast. He also benefited from a £2000 scholarship and the right to work during his studies.

37. Although the appellant had concerns about Hamas when coming to the United Kingdom arising out of his treatment in Gaza previously, it was the message from his brother which had tipped the balance and caused him to claim asylum. This was a *sur place* claim.

38. The refusal letter accepted that there were no definitive external credibility issues: the appellant's account was consistent with what was known and set out in external country materials, regarding the circumstances in the Gaza strip, and the Hamas *de facto* government of the region.

39. The appellant had post-traumatic stress disorder following his two claimed detentions. He had been referred for psychiatric assessment and treatment, and had been unable to pursue his course. The existence of his depression and post-traumatic stress disorder boosted the credibility of his account overall, as set out in letters from his previous solicitors. The appellant had provided documents to support the protests element of his claim.

40. The Military Court document should be regarded as reliable to the appropriate standard (see *Tanveer Ahmed*) and again, was corroborative of the appellant's account.

41. The Upper Tribunal should allow the appeal.

Analysis

42. This is an appeal which turns on the credibility of the appellant's account and on the lower standard of proof which applies in international protection claims. Only if the appellant has not proved his case to the lower standard of reasonable degree of likelihood or real risk can this appeal be dismissed.

43. Ms Everett accepted, as the respondent had in the refusal letter, that the appellant's account is consistent with what is known of the country conditions: public servants, including teachers, did have their pay reduced by Hamas and did demonstrate

against it, as the press reports in his bundle show, and as the respondent has accepted. Hamas does keep a tight rein in the country and ill-treatment occurs in detention, with impunity.

44. I have looked again at the respondent's reasons for finding the appellant's account not credible. She conflates the two pre-existing events with the event which triggered this claim. The proper analysis seems to me to be that at least one of the demonstrations is supported by a press report at about the right time, and that, given the constraints on the media in Gaza, which are set out in the US State Department Report and the respondent's own CPIN reports, there is an element of self-censorship which means that not all demonstrations are likely to have been reported in the press. Absence of evidence is not evidence of absence.

45. The triggering event for this claim was the arrest and questioning of the appellant's brother, just after he left Palestine in early September 2018, because the appellant had not attended the schools where he worked for 4-5 days. With respect to the respondent, the absence of a teacher from school is an obvious matter: Hamas would not need to have been tracking the appellant for seven months for someone to notice that, in the first few days of the autumn term, he was not present in class. The distinction drawn is without substance.

46. Hamas' reasons for the appellant being released in February 2017 and February 2018 are unclear. It is not helpful to assume that Hamas operates exactly like the United Kingdom police: there may have been many demonstrators arrested, and the Hamas authorities might have their own reasons for arresting and charging (or merely threatening) the demonstrators on each occasion.

47. As regards the chronology of the appellant's *sur place* claim, that is consistent with the account he gives. There is also no inconsistency in the evidence about his health and the failure to enrol on his translation course at Queen's University Belfast. His failure to register for the Queen's University Belfast translation course on 12 September 2018 (the day after he made his asylum claim) is not inconsistent with the core account. There is force in the submission that a person with a pre-paid course for which he had paid fees, been given a bursary, and been authorised to work to support himself, would not lightly abandon that to live on very limited benefits and be debarred from employment, in a state of anxiety, pending the resolution of his asylum claim.

48. The appellant told the respondent on 26 September 2018 during his screening interview that he had no medical issues. He told his general medical practitioner the same thing. The medical issues only began in November 2018 and accelerated in early 2019, causing a referral to the mental health services. The evidence of the appellant's mental health problems is not fully set out but what is there is indicative that he was indeed in difficulty. As Mr McTaggart said, the only reasonable explanation for that difficulty was that his core account was reliable and he was a person who had suffered ill treatment in the past while in Gaza, and feared the same on return.

49. I have considered what weight I can give to the Military Court document. It is not an original document and I have not been provided with the statute under which the appellant is said to have been charged and the grace period given. The Military Court document supports the 'cat and mouse' approach which the Hamas authorities appear to have taken to this appellant. The appellant's evidence is that he has lost contact with his brother and his family since April 2020 and is unable to obtain any more information. Ms Everett did not challenge that evidence.

50. I conclude, applying *Tanveer Ahmed* principles, that it is not possible to assess whether this document is reliable and that therefore, it can bear only limited weight. However, there have now been three threats of prosecution, but as far as the appellant is aware, no conviction, either when he was in the Palestinian Territories or since he left. To that extent, the Military Court document corroborates the appellant's core account.

51. The appellant's evidence on entry, and now, is that he is opposed to Hamas. At [23] in the refusal letter, the respondent summarised the appellant's position:

> "23. You stated you fundamentally disagree with Hamas objectives and principles. You demonstrated your objections through attendance at protest rallies and discussing the political situation with colleagues in the educational establishments you worked in (AIR 33). "

The appellant cannot be expected to conceal that opinion on return, and if its concealment were to be based on fear (as on the appellant's evidence it would be) then applying *R (Iran),* the Tribunal is required to assess the risk on return as though he did not conceal his political opinion.

52. The appellant has been consistent in his assertion that he does not support Hamas and that they know it. His case is that they also think that he is in communication with the Ramallah authorities which is an offence under the laws made by Hamas, specifically Title IX of the Revolutionary Procedures Act 1979. They know that he has left his teaching jobs and that his whereabouts are unknown. They may or may not know that the appellant has left the country: he paid an agent to help him use the Rafah crossing and travelled on a valid Palestinian Authority passport with a visa for the United Kingdom.

53. Overall, the evidence before the Upper Tribunal is more than sufficient to establish that the appellant's account is credible, to the lower standard applicable in international protection appeals, and that it creates a real risk of persecution or serious harm if he were to be returned now. The appellant has proved to that standard that Hamas regards him as a person who is in communication with the Ramallah authorities, an anti-Hamas demonstrator, and a person who is destabilising the political situation in the Palestinian Territories. They are looking for him. They may, or may not, realise that he is no longer in the Palestinian Territories but they do know that he is no longer teaching at the schools where he was working, and that his whereabouts are unknown. The appellant has been ill-treated in the past and if his

account is credible, Hamas told his brother that if they could find him, they would shoot him. That risk engages the Refugee Convention, and Articles 2 and 3 ECHR.

54. The appellant has not sought to exaggerate what happened to him in his detentions in February 2017 and February 2018, but the sleep deprivation, food deprivation, lack of blankets and soaking in cold water are all accepted to be within the range of ill-treatment which Hamas uses. The appellant still has difficulty sleeping and eating, and his general medical practitioner's records show him steadily losing weight, as well as requiring anti-anxiolytic medication.

55. That past ill-treatment, which I find occurred as alleged, engages paragraph 339K of the Immigration Rules HC 395 (as amended):

> "339K. The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated."

Nothing in the country evidence accepted on behalf of the respondent indicates that there are good reasons to consider that such persecution and/or serious harm would not occur again if he were to be returned now.

56. For all of the above reasons, this appeal falls to be allowed on Refugee Convention grounds and under Article 3 ECHR.

DECISION

57. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.
I set aside the previous decision. I remake the decision by allowing the appeal.

Signed *Judith AJC Gleeson* Date: 29 June 2021
Upper Tribunal Judge Gleeson