



**Upper Tribunal
(Immigration and
Asylum Chamber) Appeal**
Numbers IA/01299/2020

THE IMMIGRATION ACTS

Heard at Manchester via Teams

16 December 2021

**Decision and Reasons
Promulgated
On 6 January 2022**

Before

**Upper Tribunal Judge Bruce
Deputy Upper Tribunal Judge Sills**

Between

**MG
(ANONYMITY DIRECTION MADE)**

and

Appellant

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Representation:

For the Appellant: Mr Sadiq, Adams Solicitor

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

Introduction

1. The Appellant (A) appeals against the determination of First-Tier Tribunal Judge Gould (the FTT Judge) dated 17 May 2021, dismissing his appeal against the refusal of his protection claim.

Factual Background

2. A is a national of the Palestinian Authority, born on 30 December 1993. The Respondent (R) summarised the basis of his asylum claim as follows in the decision under appeal:

You claim that:

A. you are a national of the Palestinian Authority and are a former resident of Gaza

B. you joined Fatah in 2010 or 2011 and subsequently became a leading member of the organisation in 2013 or 2014

C. you took part in protests against power shortages in Gaza in 2016

D. alternatively, these protests took place in October 2017

E. you experienced problems due your involvement with Fatah, namely with the Hamas de facto authority in Gaza

F. you were detained by Hamas on 10 to 15 separate occasions between 2010 or 2011 and March 2019

G. you were detained between 2 days and 1 week on each occasion, during which time you were tortured and interrogated

H. you were always released from detention on the condition that you signed a document agreeing to cease all Fatah-related activities

I. you always reneged on the conditions of your release and resumed your Fatah activities

J. you were later accused of treason and working for the Israelis as a spy by Hamas because your travel permit was issued by the Israeli authorities in 10 days instead of the usual 30-60 day period

K. alternatively, you have never been accused of a convictable offence

L. you exited Gaza legally in October 2017 via the Erez crossing

M. you have taken part in sur place political activities, namely the Bedna Naesh [sic] (Bedna Neesh - 'We Want to Live') protest in March 2019

N. your father and brother were detained by Hamas for 2 days and interrogated in connection with your involvement in the Bedna Neesh protest

O. alternatively, they were questioned about your travel permit

You fear Hamas and believe that you “will be taken away as soon as [you] arrive at the crossing” because your “name is listed as wanted by the [Hamas] authorities” due to your involvement with Fatah (AIR, 47). You further claim that “Hamas authorities will punish [you] with [the] death penalty” because “treason and working as a spy for Israel carries [the] death penalty” (AIR, 46).

3. R refused A’s protection claim on 9 October 2020. The FTT Judge dismissed A’s appeal for the following reasons. The Judge found that A’s account was not credible. The detail provided about Fatah’s inception was inadequate. A’s claim to have joined Fatah during the 2010/2011 school year was inconsistent with the background information stating that individuals had to be 18 to join. While A had claimed to be a leading member, he had provided no corroboration of this. It was not credible that A would be detained up to 15 times without any sanction or punishment. A’s evidence concerning his detention was inadequate. It was not credible that A was perceived as a spy. He was able to leave Gaza on his own passport. A’s evidence about the date of the power cut protest and his own departure from Gaza was inconsistent. The Badna Neesh protest was not overtly political. There was insufficient evidence of A’s claim to have helped organise the protest. A’s claims of long-term commitment to Fatah were inconsistent with his inactivity in the UK. While A may have had some involvement with Fatah, this was not at the level or for the period claimed. Nor had it provoked the interest of Hamas past or present.
4. A applied for permission to appeal arguing that the FTT Judge had failed to make findings on core evidence. A had relied on 4 letters/emails purportedly from Fatah dated 19 May 2019 (RB69), 20 May 2019 (RB68), 16 January 2021 (AB8), and 29 January 2021 (additional document). These documents corroborated A’s account and also dealt with some of the FTT Judge’s credibility concerns. The FTT Judge’s failure to make findings on these documents amounted to an error of law. Further, while A was criticised about his knowledge of the inception of Fatah at para 25, this was not raised with A. The grounds further criticise the FTT Judge’s reasoning at paras 26-7.
5. On 9 June 2021 FTT Judge Rhys-Davies granted permission as the grounds correctly identified that no findings were made on the email evidence and that this was arguably an error of law. R did not file any Rule 24 Response.

The Hearing

6. At the outset, we asked Mr McVeety to set out R’s position on the appeal. He informed the Tribunal that he did not oppose the appeal. He accepted that FTT Judge failed to consider or make findings on the four documents set out above. He accepted that the documents were relevant to an important issue in the appeal, namely A’s involvement with Fatah. He accepted that the FTT Judge did need to consider and make findings on those documents. In view of the fact that R did not

oppose the appeal, we informed the parties that we were satisfied that the making of the FTT decision did involve making an error of law. Both representatives submitted that the matter should be remitted to the FTT for a fresh credibility assessment. We informed the parties that we agreed that remittal was appropriate and that our written decision would follow.

Findings

7. We find that the making of the FTT decision involved making an error of law. An important part of A's asylum claim was the four documents A claims were written by Fatah in support of his claim as set out above. The documents provide corroboration of A's claim to be involved with Fatah. They corroborate the following specific aspects of A's account: his claim to be a regional leader, to have been previously detained by Hamas, to have participated in the demonstration against power cuts, and to have been involved in the Badna Naesh demonstrations while abroad. The documents also respond directly to specific points taken against A by R (and indeed subsequently the FTT Judge) in relation to the following issues: the age at which a person can join Fatah, discontinuation of membership due to inactivity, the date of the protest against power cuts attended by A, and the trial and preparation period of membership. These were important documents in A's case, both corroborating his account and dealing with adverse points taken against A by R in the decision letter. A's skeleton argument before the FTT at para 15 drew specific attention to these documents.
8. The material part of the decision, the findings, makes no reference to these documents. The FTT Judge was required to consider these documents as part of the assessment of A's credibility but failed to do so. The FTT Judge has thus failed to consider and make findings on material matters. This is an error of law. We therefore set aside FTT decision.
9. We have considered whether to re-make the decision or remit the case to the First-tier Tribunal. We have had regard to para 7 of the 2014 Practice Statement for the Immigration and Asylum Chamber of the Upper Tribunal. The error of law relates to the assessment of the credibility of A's account which must be carried out afresh. It is therefore appropriate to remit the appeal to the First-tier Tribunal.

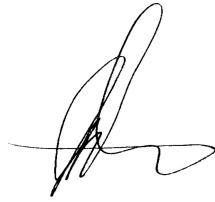
Notice of Decision

The decision of the First-tier Tribunal contains a material error of law and is set aside.

The appeal is remitted to the First-tier Tribunal sitting at Manchester to be considered afresh with no findings preserved by a judge other than First-tier Tribunal Judge Gould.

Signed

Date 16

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December 2021

Deputy Upper Tribunal Judge Sills

Direction regarding anonymity - Rule 14 of the Upper Tribunal Rules

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

Signed

Date 16

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December 2021

Deputy Upper Tribunal Judge Sills