IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001393
First-tier Tribunal Nos:
PA/51445/2022
IA/03921/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 16 July 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

ASD
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms. S. Ferguson, Counsel instructed by Freemans Solicitors
For the Respondent: Mr. T. Melvin, Senior Home Office Presenting Officer

Heard at Field House on 27 June 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal by the Appellant against a decision of First-tier Tribunal Judge Bart-Stewart (the "Judge") promulgated on 2 January 2023 in which she dismissed the Appellant's appeal against the Respondent's decision to refuse his protection claim. The Appellant is a Palestinian refugee who is stateless, and who had been living in the UNRWA camps in Lebanon.

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2. Permission to appeal was granted by Upper Tribunal Judge Reeds on 23 May 2023 as follows:

> "2. Notwithstanding the inconsistent evidence identified by the FtTJ, the FtTJ appear to accept the core of the appellant's case that he had been involved with Sarayat, he had received financial assistance from them but did not want to fight however it was concluded that he was not at risk of forced recruitment (see para [44]). The grounds at paragraphs 5 – 7 raise arguable points as to the mischaracterisation of the nature of the risk given that the appellant is a refugee, and it is only by operation of Article 1D that he is not recognised as such.
>
> 3. Other issues in the grounds relate to the assessment of credibility and asserted errors of fact. It is arguable that the FtTJ's finding at paragraph [29] regarding his age was not consistent with the asylum interview responses at question 95 – 97 when he gave his correct date of birth and age. Other issues raised relate to the correctness of inferences drawn from background material available. Those grounds appear weaker, but I do not seek to limit the grounds".

The hearing

3. I heard oral submissions from Ms. Ferguson and Mr. Melvin. I reserved my decision.

Error of law decision

4. The grounds of appeal are interrelated. The first ground asserts that the Judge applied the wrong legal test which materially affected the outcome. It is submitted that the Judge should have asked whether the threat from Sarayat amounted to a serious protection concern against which UNRWA could not offer protection or assistance, rather than whether Sarayat/Hezbollah would still have an interest in the Appellant should he return. Ground 2 asserts that the Judge's assessment of credibility contains material errors of law. In particular, she did not consider the Appellant's account against the known background and she made errors of fact which she said counted against him in terms of credibility.

5. These issues are connected given that, when considering either the question of whether UNWRA would be able to offer the Appellant protection, or whether Sarayat/Hezbollah would have an interest in him on return, the Judge's findings on his account of what happened are central.

6. The Judge sets out at [19(i)] the "agreed issues in dispute" as "Whether the appellant is excluded from the Refugee Convention by the operation of Article 1D or has UNWRA's protection or assistance ceased for any reason". She then states at [28] that:

> "It was accepted by both parties representative that the core issue is the appellant's credibility. The appellant has already been recognised as a refugee by UNWRA whose protection he left".

7. It was submitted by Ms. Ferguson that the issue was whether the Appellant had had a legitimate reason for fleeing in the first place, as was set out at [19]. If he did, he would be entitled to a grant of asylum. She submitted that accepting the core of his account was enough for him to succeed as the issue was whether he had been unable to avail himself of the protection of UNWRA. On his account he had been unable to do so, which is why he had fled.

8. The Judge makes findings from [29] onwards in relation to the Appellant's account of events. I have carefully considered whether these findings are infected by errors of law. At [29] the Judge finds that the Appellant gave his wrong date of birth on arrival, which is accepted. She then finds that he continued to lie about his age at his substantive interview. She states:

> "I accept that he was likely under the control of an agent and had been advised not to give his correct date of birth otherwise he would be returned to Europe. His screening interview was in the early hours of the morning. His reason for giving an incorrect data that time disclosable (sic) however he continued to lie about his age in the substantive interview by which time he had been in the UK for two years and no longer under the control of agents [q85-89]. This undermines his credibility".

9. I find that this is factually incorrect. The Appellant gave his correct date of birth at his asylum interview, Q85 to Q89. He did not continue to lie about it. I find that the Judge's very first finding in relation to the Appellant's credibility is based on an error of fact.

10. At [31] she states that his account has been "inconsistent and contradictory with each telling". She states that some of his responses "are clearly meant to mislead". She then refers to the fact that the Appellant said that the camp was not under UNRWA's control but under the Sarayat militia. It was submitted by Ms. Ferguson that the Appellant would have no reason to lie about this, and would gain no benefit by lying as it was something which could be factually checked. Rather it went to his perception and experience of life in the camp, that objectively Sarayat was in charge. This was a significant point which should not undermine his credibility but which should be viewed against the background information. However, there is no reference to the background information when making this finding.

11. The findings which follow in [32] and [33] revolve around the nature of the training, the amount of people who were involved and the length of time that it took. The Judge finds there to be discrepancies here, but states at the end of [33] in relation to the alleged discrepancy about the numbers involved that "in the context of the background evidence about the way informal militias operate in the refugee camps, it is possible that he had some involvement with Sarayat and may indeed have been receiving money from them." At [34] she makes further findings relating to his involvement with Sarayat, including the finding that some of his evidence was "plausible and consistent". Her findings continue from [35] to [37]. At [38] she states:

> "It is difficult to reconcile what are many inconsistencies but note that it was a very long interview, long after the event and the appellant has only 4 years of likely poor education. He lived in a refugee camp rather than a structured environment. I have therefore also given consideration to background information in assessing the plausibility of the core account".

12. It was submitted that this background evidence should have been considered first, and the Appellant's own evidence set against it. Mr. Melvin accepted that the Judge's consideration of the evidence was not necessarily in the right order, but that the decision should be considered holistically. The problem with this is that the Judge makes her credibility findings based on apparent inconsistencies in his account before she turns to consider the background information. This means that, when making credibility findings, she has not considered the Appellant's evidence in the round in the context of known background evidence.

13. The Judge considers some evidence from the CPIN at [39] and [42]. She finds at [43]:

> "The conditions in the camps can be appalling and no doubt Palestinian refugees are vulnerable to recruitment by Hezbollah to fight in Syria particularly the time when the appellant left Lebanon. I find it plausible that the appellant may have had some involvement with Sarayat and that he and his family had financial support. That is the norm in the camp. However rather than forced conscription, I find it far more likely his father being aware young men [in] such as the appellant were going to Syria to fight decided he should leave the country. The inconsistency continued with regards to whether Sarayat or Hezbollah visited the family home looking for him. This is most unlikely. The appellant was able to leave camp and go through the various security checkpoints to arrive at and then leave the airport when it was under the control of Hezbollah on his own documents".

14. The Judge finds it plausible that the Appellant had some involvement with Sarayat. She also finds, contrary to the background evidence, that the Appellant left through the airport when it was under the control of Hezbollah. It was submitted that Hezbollah were not in charge of the airport at that time with reference to the background evidence. The CPIN at [10.1.7] refers to Hezbollah tracking people on arrival, but there is nothing to suggest that they prevented Palestinians from leaving Lebanon. I find that this error has affected her findings in relation to the likelihood of the Appellant being able to leave Lebanon.

15. Despite finding that there were inconsistencies in the Appellant's account, the Judge nevertheless finds that he had some involvement with Sarayat [14]. However, she has not accepted his account in its entirety as she did not find him to be credible. I find that her credibility findings involve the making of material errors of law as they are based in part on errors of fact, and further were made without consideration of the background evidence.

16. The Judge states at [30] if the Appellant's account is untrue, he is not a refugee. However, this is not right, given that he is already a refugee. It was only by operation of Article 1D that he was not recognised as such. As accepted by Mr. Melvin, the Judge gave no consideration to whether the Appellant was still excluded by Article 1D. He submitted that, while the Judge should have done this, it made no material difference as she had found that he would not face a risk on return. However, her findings as to what exactly happened to the Appellant in the camp are infected by her flawed assessment of his credibility, which in turn affects her assessment of his risk on return.

17. Taking into account all of the above, I find that the grounds are made out. I find that the decision involves the making of material errors of law both in relation to the application of the legal test, which the Judge has failed properly to engage with, and in her consideration of the evidence and risk on return.

18. I have carefully considered whether this appeal should be retained in the Upper Tribunal or remitted to the First-tier Tribunal to be remade. I have taken into account the case of Begum [2023] UKUT 46 (IAC). At headnote (1) and (2) it states:

> *"(1) The effect of Part 3 of the Practice Direction and paragraph 7 of the Practice Statement is that where, following the grant of permission to appeal, the Upper Tribunal concludes that there has been an error of law then the general principle is*

that the case will be retained within the Upper Tribunal for the remaking of the decision.

(2) The exceptions to this general principle set out in paragraph 7(2)(a) and (b) requires the careful consideration of the nature of the error of law and in particular whether the party has been deprived of a fair hearing or other opportunity for their case to be put, or whether the nature and extent of any necessary fact finding, requires the matter to be remitted to the First-tier Tribunal."

19. I have carefully considered the exceptions in 7(2)(a) and 7(2)(b). I have found that the Judge erred in her assessment of the credibility of the Appellant's account and that no findings can be preserved. I therefore consider that the extent of the fact-finding necessary means that it is appropriate to remit this appeal to be reheard in the First-tier Tribunal.

Notice of Decision

20. The decision of the First-tier Tribunal involves the making of material errors of law.

21. I set the decision aside. No findings are preserved.

22. The appeal is remitted to the First-tier Tribunal to be reheard de novo.

23. The appeal is not to be listed before Judge Bart-Stewart.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
13 July 2023