Upper Tribunal
(Immigration and Asylum Chamber) **Appeal number:** PA/04180/2018

THE IMMIGRATION ACTS

Heard at Glasgow
on 18 January 2019

Decision & Reasons Promulgated
On 13 February 2019

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

JAMAL AJRAM

Respondent

For the Appellant: Mrs M O'Brien, Senior Home Office Presenting Officer
For the Respondent: Mr S Winter, Advocate, instructed by Rutherford Sheridan, Solicitors

DETERMINATION AND REASONS

1. Parties are as above, but the rest of this decision refers to them as they were in the FtT.

2. The SSHD has permission to appeal to the UT on the grounds stated in the application dated 6 June 2018.

3. In a rule 24 response filed on 27 July 2018 the appellant submits that the grounds disclose no material error of law in the decision, and that in any event the appeal should have been allowed under article 8 of the ECHR.

4. Mrs O'Brien submitted further to the grounds along these lines:

   (i) Focusing firstly on [33 (i) – (iii)] of the decision, none of those reasons justified departure from the earlier decision of Judge Handley – (i), because it went beyond belief to say that the appellant's claim did not materially overlap with that of his mother, when both were based on domestic abuse within the same household and by the same person, the husband and father in the family;

   (ii) (ii), because it was speculative to consider that the appellant (then aged 11) could have given evidence in his mother's appeal, and might have added cogency to what she said – that was a decision made by his mother, with the benefit of advice, which was not for the judge to revisit; and

   (iii) (iii), because the medical information going to the credibility of his mother had also been before Judge Handley – his decision stood as the resolution of her credibility, and it was not for Judge Green to take that information as justifying him in taking another view.

   (iv) [33] was the bedrock of Judge Green's decision and its reasoning was legally inadequate, to the extent that it at least bordered on perversity.

   (v) The decision at [34] was confused and self-contradictory, and did not justify the conclusion that the appellant had been a victim of domestic violence at the hands of his father.

   (vi) The decision at [38] held that the appellant had sufficiency of protection. The risk being abrogated, there was no reason to go on at [39 - 41] to allow the appeal on grounds of internal relocation.

   (vii) The finding at [38] was effectively that the appellant was not at risk on return.

   (viii) As the decision turned on legal errors, there were no findings which might survive, to permit a favourable outcome in terms of article 8, which the judge had not considered (the alternative sought in the rule 24 response).

5. Mr Winter expanded upon the rule 24 response:

   (i) Judge Green at [30 – 32] directed himself accurately and in detail about how to approach earlier decisions.

   (ii) Having set out the tests, he gave clear reasons for departure.

   (iii) It might be "loose language" to say at [33 (i)] there was no material overlap between the claims, but no worse than that. The decision as a whole showed that the judge was well aware of the content of both claims.

   (iv) At [33 (iii)], Judge Green was entitled to look at whether the mental condition of the appellant's mother affected her credibility, because case law had moved on in the interim, and it did not appear that Judge Handley had factored in the medical evidence in that way.

(v) As to [34], it was notable that the appellant was not cross-examined about events in Lebanon.

(vi) There was no challenge to the finding at [36] that the appellant's account put him in the Refugee Convention category of particular social group.

(vii) There was no error in the finding that the appellant had been a victim of domestic violence in the past.

(viii) Past persecution was an indicator of future risk.

(ix) It was implicit in the decision that the appellant had been found to be at risk on return.

(x) The decision at [38] was mistakenly phrased. The judge meant that there was no legal sufficiency of protection. That was why he went on to decide the case in terms of internal relocation.

(xi) There was no error of law.

(xii) Even of there had been legal error, it did not affect the favourable credibility findings, and these should be preserved, if the decision were to be remade.

6. I indicated that the decision erred in such respects that it fell to be set aside.

7. The decision is plainly a careful and indeed a painstaking one. However, at [38] it goes astray:

> "… The appellant was a victim of domestic violence as a child but he is now an adult and I do not think it could be said that there is evidence of insufficient protection because of his childhood experiences. On the face of it, there will be sufficient protection for the appellant to return safely to Lebanon."

8. Past persecution is an indication for the future, but that is not an automatic presumption. It applies, in terms of paragraph 339K of the rules, "unless there are good reasons to consider that such persecution … will not be repeated." There is no justification in the decision for any finding of risk on return. No such finding is implicit.

9. The point is well caught by [7] of the grounds and by the submissions of Mrs O'Brien.

10. The Judge has become concerned with *Devaseelan* issues, Refugee Convention categorisation, sufficiency of protection, and internal relocation, but unfortunately has overlooked that absent a finding of risk on return, these are irrelevant matters.

11. The grounds and submissions stopped short of contending that the reasoning at [33] is perverse. However, the reasons given are weak, and the grounds and submissions are strong. The overall challenge to the

decision is such that those reasons are legally inadequate, and no findings should stand.

12. There is therefore no route at this stage to remaking the decision on article 8 grounds.

13. Mrs O'Brien did not contend that even on the most favourable findings of primary fact for which the appellant could hope (as reached by Judge Green) his claim was bound to fail. She submitted that the appropriate outcome was an entirely fresh hearing in the FtT.

14. The decision of the FtT stands only as a record of what was said at the hearing.

15. It is appropriate under section 12 of the 2007 Act, and under Practice Statement 7.2, to remit to the FtT for an entirely fresh hearing.

16. The member(s) of the FtT chosen to consider the case are not to include Judge Green.

17. No anonymity direction has been requested or made.

21 January 2019
UT Judge Macleman