



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-000147

First-Tier Tribunal No: PA/51477/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

23rd November 2023

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

IHAB MOHAMMED SALEH
(no anonymity order)

Appellant

and

S S H D

Respondent

Heard at Edinburgh on 15 November 2023

For the Appellant: Miss K Dingwall, of Latta & Co, Solicitors

For the Respondent: Mr M Diwyncz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is of Palestinian origin. He claimed that he was born and brought up in Dara'a refugee camp in Syria. The appellant accepted that he is a Palestinian refugee, but not that he lived in Syria, and so declined to grant protection in any form.
2. The appellant arrived in the UK while still a child, along with his aunt, Majdoulin Saleh Tobassi. Her appeal against refusal of asylum was dismissed by FtT Judge McGavin on 17 August 2018. Her claim was found, at that stage, generally unreliable.
3. The appellant's later asylum claim, based on a narrative shared with his aunt, was refused on 12 January 2021. FtT Judge Cowx dismissed his appeal by a decision promulgated on 16 January 2022.

4. Judge Cowx took the decision on the case of the appellant's aunt as his starting point, but found that the appellant had lived in Syria (although not up to the time of civil war) and, at [8.10], that he had no well-founded fear of persecution in Syria. He also found no evidence that the appellant would be unable to reside in Palestine, and no need for protection.
5. On 11 February 2022 FtT Judge Swaney granted permission to appeal to the UT:
...
 2. The grounds assert that the Judge erred by making a mistake of fact about the appellant's education; in failing to consider the appellant's asylum claim by reference to his place of former habitual residence; and in failing to apply the guidance given in *KB* (Failed asylum seekers and forced returnees) Syria CG [2012] UKUT 426 (IAC).
 3. It is arguable that the judge's findings in relation to the appellant's nationality and its relevance to whether the appellant is a refugee are not sufficiently clear. It is also arguable that the judge has failed to consider whether by finding that he is Palestinian, the appellant is in fact stateless, which is relevant to the operation of the Convention in relation to people outside their country of former habitual residence.
 4. The grounds of appeal disclose an arguable error of law. The grant of permission is not limited.
6. The Judge may have misinterpreted the evidence over whether the appellant attended only primary and not secondary education in Syria, which bore on his likely date of departure, but that distinction is of no importance. However, the further contentions in the grounds raise crucial matters which were not adequately resolved by the FtT. That was an error of law.
7. The Judge records the position of the appellant's representative that she "had no instructions to assist the tribunal" on the matter of Palestine, which is hopelessly inadequate.
8. The case should not have been resolved without developed submissions on the effect of the Judge's resolution of the facts.
9. Mr Diwyncz accepted, in broad terms, that on the FtT's unchallenged factual findings, it was unlikely that the appellant could be removed to Palestine, and that as a result, in relation to Palestine, he appeared to be entitled at least to humanitarian protection.
10. According to the respondent's "CPIN", Occupied Palestine Territories, version 1.0, December 2018 (to which I have referred since the hearing) there is no means by which the appellant, born outside Palestine and never having lived there, might be removed to that destination. See, in particular, sections 17, Freedom of Movement, and 18, Official Documents.
11. Mr Diwyncz accepted, in broad terms, that there are few, if any, returns to Syria, and that a finding of Syrian origin might have been expected to show entitlement to protection under the Refugee Convention.

12. Also since the hearing, I note [48] of the SSHD's decision letter dated 19 March 2021:

Although any appeal will be considered on the basis of a risk of return to Syria, as this is the country of which you claim to have refugee status in, the Home Office will argue that you have not lived in that country so the appeal must fail. Notwithstanding that conclusion, if the Tribunal considers that you have refugee status in Syria then it is acknowledged that there would be risk to you on return, however, as it is not accepted that you are a Palestinian refugee from Syria, it is not accepted that there is a risk on return to you on being returned there.

13. That position is unsurprising, by reference to the respondent's "CPIN", Syria, version 1.0, June 2022.

14. The Judge's findings of fact should obviously have led him to allow the appeal.

15. (The appellant's aunt succeeded in a subsequent appeal, case PA/55885/2021. However, his case succeeds on a remaking, without further support.)

16. The decision of the FtT is set aside. The appeal, as originally brought, to the FtT, is allowed on asylum (Refugee Convention) grounds.

Hugh Macleman
Judge of the Upper Tribunal, Immigration and Asylum Chamber
16 November 2023