



**First-tier Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/64191/2023

THE IMMIGRATION ACTS

**Heard at Manchester
On 26 and 27 September 2024**

Before

**JUDGE PLIMMER
CHAMBER PRESIDENT**

**RESIDENT JUDGE FRANTZIS
JUDGE OF THE FIRST TIER TRIBUNAL**

Between

DANA NASSER SULAIMAN ABUQAMAR

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Hussain KC, Mr D Seddon KC and Mr R Fakhoury, instructed by Leigh Day

For the Respondent: Mr Z Malik KC and Mr W Hays, instructed by the GLD

DECISION AND REASONS

INTRODUCTION

1. The Appellant, a dual Jordanian-Canadian citizen of Palestinian origin, has appealed on human rights grounds pursuant to s.82(1)(b) and s.84 of the Nationality, Immigration and Asylum Act 2002 ('the 2002 Act'), against the Respondent's decision dated 1 December 2023, cancelling her permission to enter the United Kingdom ('UK') as a student pursuant to [9.3.2] of the Immigration Rules and to refuse her human rights claim ('the Decision').

2. The Decision is predicated upon the Respondent's conclusion that the Appellant's presence in the UK is not conducive to the public good. This is because on 7 and 8 October 2023 the Appellant made three statements which the Respondent considers to be, when taken in combination and in the context of their timing, supportive of the actions of Hamas, a proscribed terrorist organisation, and therefore supportive of terrorism, specifically atrocities committed against Israeli citizens on 7 October 2023 ('the 7 October attack').
3. Both members of the panel have substantially contributed to this decision.

BACKGROUND

4. The background to this appeal is set out in the documentation contained on myHMCTS. We have considered the extensive evidence provided by the parties but it is not necessary to set this out in detail because much of it is undisputed. In particular, the Respondent's Review at [3.2] makes it clear that she does not take issue with much of the Appellant's lengthy witness statement and the following matters are undisputed.
 - (i) The Appellant is the descendant of Palestinian refugees and was born (in 2004) in Canada and grew up in Dubai. She is proud of her Palestinian identity and heritage, and her familial and cultural background is deeply rooted in Palestinian culture. She has extended family members in Gaza but at least 22 have been killed following Israeli military action, subsequent to the 7 October attack.
 - (ii) The Appellant has been, and continues to be, deeply concerned for and committed to the Palestinian people both culturally and politically. She strongly supports Palestinian national aspirations and self-determination and has made it clear that her commitment to these values and aspirations are positive and progressive. Her vision of Palestine is open, diverse and one that respects the rights of women and all religious groups. She has made it plain that she does not support the targeting of civilians.
 - (iii) As the Appellant put it in her witness statement at [14] "*our cause, arising out of the injustices perpetrated against us and the need to resist the effective erasure of our community and culture, inspired my interest in law and human rights*". She completed her first year of a law degree at the University of Manchester remotely from Dubai and was granted leave to enter as a student from 13 September 2022 to 30 October 2024.
 - (iv) The Appellant excelled in her law degree and was awarded First Class Honours upon completion in the summer of 2024. Her average grade placed her in the top 1% of her cohort. References from her tutors are excellent and she has been described as generous, thoughtful, measured and committed to deep thinking. She achieved 85% in the Counter Terrorism and Human Rights Module and 85% in her dissertation on 'Neo-Colonialism and International Law: The Question of Palestine'. The Appellant has explained that her study of human rights law and international humanitarian law ('IHL') encouraged her wish to be involved in the

deployment of law as a means of advancing the cause of the Palestinian people.

- (v) The Appellant participated in 15 Manchester Model United Nations conferences in her capacity as Deputy Secretary General of that organisation and has taken on leadership roles as head of events for her University's Division of Lawyers Without Borders and as Vice-President of the University's Pro-Bono Society.
- (vi) The Appellant became President of the Manchester Friends of Palestine ('MFOP'), an official student society.

5. It is against this background that we turn to the statements that gave rise to the Decision in this case.

The statements

6. On 7 October 2023 the Appellant wrote this post that appeared on the MFOP Facebook and Instagram pages at 4.28pm that day ('the MFOP Post'):

*"EMERGENCY DEMONSTRATION!
We're sure you've seen the uprising of Palestinians in Gaza against Israeli's oppressive regime whereby they've broken out of the open air prison they've been living in for over a decade. Join us TOMORROW to support the Palestinian Resistance against Israel's Ethnic Cleansing, mass murder, and brutal occupation!
TOMORROW, Sunday 8 Oct
1pm
Piccadilly Gardens
Bring your Flags, Poster Boards, Kufiyas
These events are unprecedented and hundreds of Palestinians have been martyred today alone for their heroic resistance. Don't let their blood go in vein.
Show your support.
Resistance is Justified when People are Occupied."*

7. At that planned demonstration, on 8 October 2023 at around 1pm, the Appellant gave a speech in which she said this ('the Speech'):

"Yesterday, for first time in modern history ... after 16 years of blockade, Gaza was not on the defence, Gaza was actively resisting. Israel is an apartheid, racist, colonial state. It tortures, it brutalises, it terrorises Palestinians, furthering its policy of fragmentation of the Palestinian people. 2 million Palestinians, enclaving them into a small strip of land with little to no access to clean water, to food, to life saving medicine, to electricity ... yesterday Gaza broke free ... Gaza broke out of prison ... Palestine and the Palestinian people have been recognised by international actors in the history of colonial movements, in the history of revolutions, as those who have resistance, those who have resilience and we will continue to resist, we will continue to be resilient."

8. Following the demonstration, the Appellant gave a spontaneous interview to Sky News at around 2.40pm on 8 October 2023 ('the Sky Interview'). We include the full transcript of this for completeness:

“Interviewer: Manchester, yeah, up to a thousand people or so marching through the streets of Manchester voicing their support for the Palestinians and for the action that we've been seeing over the past few days. I can have a chat now with a, with Dana Abuqamar, who is a Palestinian living in Manchester, also the President of the Manchester Friends of Palestine. I mean, first of all, your reaction to what was happening in your homeland and these, these sudden events that have been taking place over the past couple of days?”

Dana Abuqamar: Um-hm. So, um, in terms of having family there, obviously one would be worried ah for, you know, what has hap...what is happening and its effects on both their mental and physical health. A lot of, a lot of Gazans right now are living in fear, but also, they are full with pride. They, this this was, this is the first time that something like this happens um in modern day history. For sixteen years Gaza has been under blockade and for the first time they are actively resisting. They are not on the defence, and this is truly a once in a lifetime experience and everyone is, we are both in fear, but also, in fear of what, how, how Israel will retaliate and how we've seen it retaliate overnight um, the missiles it's launched and the attacks but also, we are full of pride. We are really, really full of joy of of of what has happened.

Interviewer: Has the extent of the operation by Hamas surprised you? Surprised your family in Palestine?

Dana Abuqamar: I think it caught everyone by surprise. Palestinian resistance is is has been, you know, strong for 70 years, um but this time there was no preparations for it. And I think as I mentioned, Gaza and Palestinian resistance in that specific region has always been, you know, retaliatory, but this time it was Gazans who who have taken the first move, which has taken Israel by surprise. But all of us, Palestinians in the diaspora and Palestinians in, in, in, in the occupied territories as well. Um, but I think that has that has weakened the the, the Israeli forces and right now we can see in the Israeli Knesset how how far the the fights are going in there. And just between, like internally Netanyahu's being, you know, subject to to blames by his own people. But on the Palestinian side, we are, we are proud that this, the Palestinian resistance, has come to this to this point.

Interviewer: Thanks, Dana. Can very quickly just bring in John Nicholson from the Manchester Palestine Solidarity Campaign. You've organised the march here today. What do you make of some of the tactics that have been used by Hamas? You, you're calling for glory to the Palestinian freedom fighters but is their glory in taking hostages, women, children?

John Nicholson: The Palestine Solidarity Movement in Manchester has consistently opposed the UK's backing of Israeli arms. We have successfully closed down, Elbit, the Israeli arms firm in Oldham, and we're on the way, with the support of direct action such as Palestine Action, nationally, to close down a lot more. Our government is complicit in arming Israel. Israel then has bombed, killed, maimed, and repressed millions of Palestinians for 75 years, having stolen their land, dispossessed them, and not let them go back. So it is absolutely great. I agree with what was said that now the Palestinians have been able to break out of Gaza and say to Israel your time is up.

Interviewer: OK. Thanks very much for talking to us, John, Dana.”

9. Although the MFOP Post, the Speech and the Sky Interview are not technically statements, during the course of the hearing before us they were referred to as such and we refer to them as statements throughout this decision.
10. The Appellant sought to publicly clarify her statements shortly after they were made. The MFOP posted on their Facebook page on 9 October 2023 that the Appellant had been misrepresented, that her words has been taken out of context and distorted and included these words: *“No support for any named faction was mentioned NOR was the killing of civilians condoned. Legal action will be taken against any type of misrepresentation to this extent.”* In an interview with BBC Northwest tonight at another demonstration held shortly after 8 October 2023 (reported again by the BBC on 15 October 2023) the Appellant said this: *“The death of any innocent civilian should not be condoned ever and we don’t condone it at all”*.
11. The chronology of the Respondent’s decision-making is as follows:
 - (a) After enquiries on behalf of the Immigration Minister, the Appellant’s case was referred to the Special Cases Unit (‘SCU’) and on 13 October 2023, the SCU approached the National Community Tensions Team (‘NCTT’), the Research, Information and Communications Unit (‘RICU’) and Homeland Security Analysis and Insight (‘HSAI’) to request assessments of the statements the Appellant had made, to ascertain whether her statements would have an effect on community cohesion and to establish whether she had associations with others who might be considered terrorists or whose presence in the UK might otherwise be considered non-conducive to the public good. These were returned on 20 October 2023:
 - (i) NCTT recommended that if the Appellant’s visa is revoked, the distinction between supporting the Palestinian cause and supporting Hamas must be made clear to aid both transparency and community cohesion;
 - (ii) RICU assessed that the Appellant’s interview has not featured in recent online extremist discussions and given the sheer volume of ongoing reporting around this conflict her comments have likely been overtaken by other events;
 - (iii) A rapid scoping assessment from HSAI assessed: it is almost certain that the Appellant has made statements in support of Hamas at a pro-Palestinian protest in Manchester on 8 October 2023. HSAI assessed that MFOP has also made similar statements. HSAI further assessed that it is almost certain MFOP have a relationship with Friends of Al Aqsa, a pro-Palestinian organisation of extremist concern that has made historic pro-Hamas statements.
 - (b) In a letter dated 20 October 2023 the Respondent stated she was minded to cancel the Appellant’s permission to enter the UK and invited her to make representations within seven days. On 3 November 2023 the Appellant, through legal representatives, submitted detailed representations including the following: *“[the Appellant] has never expressed support for (and does not support) Hamas (or any other proscribed group)... does not, and never has, expressed any support*

for [the targeting of civilians], which would amount to a grave violation of IHL". It was further stated that the Appellant "is (and always has been) fundamentally opposed to the targeting of civilians or the taking of civilian hostages by any party to armed conflict".

- (c) On 23 November 2023 the SCU recommended that the Appellant's permission to enter be cancelled and the Respondent's 20-page Decision dated 1 December 2023 was served on the Appellant. This summarised the Respondent's position as follows:

"For the reasons set out above the Secretary of State is satisfied that your continued presence in the UK would not be conducive to public good. This is because you made statements which support and / or justify and / or glorify an act of terrorism which amounts to conduct which is non-conducive to the public good within the meaning of the policy, which also engages the extremism and unacceptable behaviour criteria. The Secretary of State is also satisfied that this decision does not breach your Article 8, Article 10, Article 14 or Protocol 1 of Article 1 ECHR rights."

- (d) On 6 December 2023 the Appellant appealed to this Tribunal on human rights grounds.

HEARING

Late evidence

12. At the beginning of the hearing, the Appellant's representatives sought to rely upon evidence produced the day before in breach of directions. The evidence comprises a witness statement from Tessa Gregory, a partner at Leigh Day plus exhibits, and was said to be produced in response to the Respondent's reliance on a 'media bundle' and witness statement of James Robertson, Deputy Head of the SCU. The Appellant's representatives also filed and served an updated skeleton argument on the morning of the hearing in response to the Respondent's Review, filed slightly late. The Respondent sought to rely, in addition, upon a bundle of social media evidence running to seven double sided pages and a single screenshot page from twitter.com.
13. There was no dispute between the parties as to the relevance and admissibility of these documents and we admitted them, having considered the Overriding Objective.
14. After the hearing, both parties uploaded further documents onto myHMCTS in the form of caselaw referred to in their oral submissions, a skeleton argument with updated cross references on the part of the Appellant, uncontroversial submissions on IHL and a letter from the GLD regarding certification.

Oral evidence

15. The Tribunal heard oral evidence from the Appellant, Professor Avi Shlaim and James Robertson. Each adopted the contents of their witness statements and in Professor Shlaim's case, his report. They were each cross examined. Mr Malik's cross-examination of the Appellant was probing and detailed. By contrast the oral evidence provided by Professor Shlaim and Mr Robertson was brief.

Issues in dispute / submissions

16. We heard lengthy submissions from the parties and intend no discourtesy in summarising their submissions by reference to the issues they agreed we must determine. Where relevant, we refer to the submissions in more detail when making our findings of fact. The parties agreed that we must adopt a structured approach to the issues in dispute and must determine for ourselves whether the Appellant's statements as set out above, render her presence in the UK not conducive to the public good as at the date of the hearing before us.
17. By the time of closing submissions the parties' written arguments were recalibrated and restructured, such that the Tribunal was invited to make findings on the following issues:
- (i) What was the Appellant's state of mind when she made the statements, and in particular, was she expressing support for Hamas and therefore supporting terrorism, specifically the atrocities committed against Israeli citizens in the course of the 7 October attack? Within that question, the Tribunal must resolve the Appellant's understanding and knowledge of events during that period of time.
 - (ii) Even if the Tribunal finds that the Appellant genuinely did not know about the involvement of Hamas and the civilian atrocities, when the statements are read objectively, do they express support for the terrorist atrocities committed by Hamas against Israeli citizens?
 - (iii) If we find in the Respondent's favour on issues (i) and / or (ii), has the Respondent displaced the burden on her to establish the Appellant's presence in the UK is not conducive to public good? Both parties accepted that the statements must be considered in the round with other relevant factors including the timing and frequency of the Appellant's impugned and any other relevant behaviour and the level of difficulty the UK could experience as a result of the statements.
18. Issue (i): The Appellant claims she did not know about the involvement of Hamas and the atrocities against Israeli civilians at the time she was making the statements. The Appellant's representatives point to her political, social, educational and cultural background in support of that assertion and submit that the Appellant was expressing support only for lawful resistance which she was entitled to do.
19. The Respondent regards that position as implausible and incredible given the nature and extent of the reporting at the time. The Respondent's primary case is that it is inherently implausible, and certainly not probable, that the Appellant did not know, at the time that she was making the statements, of Hamas' involvement in the 7 October attacks and of the atrocities committed against Israeli civilians. Mr Malik submitted that by her actions and words on 7 and 8 October 2023, the Appellant was in fact expressing public support for Hamas and therefore support for an act of terrorism. In all the circumstances, the Respondent properly considered the Appellant's presence in the UK is not conducive to the public good. In his submissions Mr Malik made it clear he was not asking the Tribunal to find the Appellant to be an extremist and he was

confining his submissions to her state of mind when she made the statements and alternatively the objective meaning of the statements.

20. Issue (ii): Mr Malik argued in the alternative that the statements were, when viewed in context of the events that were transpiring, on any objective view, indicative of public support for Hamas and therefore an act of terrorism, irrespective of the Appellant's state of mind.
21. The Appellant's representatives invited us to find that when read objectively, a careful analysis of the statements reveals that they do not clearly or otherwise express support for Hamas and / or the civilian atrocities committed in the 7 October attack.
22. Issue (iii): If we find in the Respondent's favour on issues (i) and / or (ii), we must go on to consider all the circumstances in the round including the factors set out in the relevant Respondent's policy before determining whether the Appellant's presence in the UK is not conducive to the public good.
23. The Appellant's representatives submitted that even if a rational observer knowing what had happened on the 7 October 2023 would take the Appellant's statements as supportive of Hamas and the atrocities committed against civilians and even if the Appellant had some level of culpability, the Respondent has still not demonstrated that her presence in the UK is not conducive to the public good, and therefore interference with the Appellant's right to free speech is disproportionate. That is because: it is clear that support for Hamas and terrorism was never at the heart of the Appellant's message; she clarified the meaning of the statements very shortly afterwards; there is very little to support any damage to the public interest in those circumstances; taking all relevant factors together and the lack of any evidence of actual damage to the public interest, the Respondent's actions against the Appellant are disproportionate.
24. Approach to the appeal on human rights grounds: Mr Malik realistically conceded that the appeal falls to be allowed on human rights grounds if we find the Respondent has failed to displace the burden of establishing the Appellant's statements render her presence not conducive to public good. In other words, Mr Malik accepted that if we ruled against the Respondent on this overarching issue, the appeal must be allowed on human rights grounds on the basis that removal in consequence of the cancellation decision would be contrary to Articles 8 and 10 of the ECHR.
25. The Appellant's representatives relied on detailed arguments to support the contention that on any view of the evidence, removal would breach Articles 8, 10 and/or 14 of the ECHR.

LEGAL FRAMEWORK

26. The parties agreed that the 2002 Act statutory appeal regime is such that the decision to cancel the Appellant's leave is not a decision to refuse a human rights claim and cannot be appealed to this Tribunal. These proceedings are therefore not concerned with the legality of the cancellation decision but with the appeal against the refusal of the human rights claim. The overarching question is not whether the Respondent's decision to cancel the Appellant's permission to enter the UK constitutes a disproportionate interference with her rights under the ECHR but whether the

requirement for the Appellant to leave the UK in consequence of the decision to cancel her permission to enter involves a breach of the ECHR.

27. As set out above, Mr Malik accepted that if the Tribunal finds that the provisions of [9.3.2] of the Immigration Rules are not made out on the facts, then the appeal falls to be allowed. Rule 9.3.2. provides that: *“Entry clearance or permission held by a person must be cancelled where the person’s presence in the UK is not conducive to the public good”*. It is not in dispute that the burden is on the Respondent to establish her ‘non conducive’ case on the balance of probabilities.
28. The Respondent’s policy ‘Suitability: non-conducive grounds for refusal or cancellation of entry clearance or permission’ (the version in force at the date of Decision was published on 10 November 2021; we were told it was re-issued on 16 January 2024 with no material changes for our purposes) sets out material factors to be taken into account when determining whether a person’s presence in the UK is not conducive to the public good. Whilst not purporting to be exhaustive, these include: (a) the nature and seriousness of the behaviour; (b) the level of difficulty the UK could experience as a result of admitting the person with that behaviour; (c) the frequency of the behaviour; (d) other relevant circumstances pertaining to that individual.
29. On behalf of the Appellant, Mr Seddon sought to rely upon the unreported decision of Raed Salah Mahajna v SSHD, IA/21631/2011 to establish propositions said not to be found elsewhere. First, in a case raising issues under Article 10, where statements made by an appellant are impugned as being potentially dangerous, it is necessary to determine whether they have a clear agenda that tends toward dangerousness, what is at the heart of the message, their profile as a whole and whether any apprehension of risk actuated in the intervening period [76-85]. Second, there are important differences in the approach to the Respondent’s assessment of the public good in statutory appeals and judicial review challenges [27-33].
30. We have decided to give permission to cite this decision pursuant to [11.1] of the Practice Direction of the Senior President of Tribunals as amended on 18 December 2018, because it includes the proposition that all the circumstances must be considered in the round when determining the impact upon the public good, consistent with the Respondent’s own policy.
31. Article 10 of the ECHR is as follows:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for the preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

31. The parties did not dispute the general principles appertaining to Article 10 based upon a long line of authorities: it is a ‘strong’ right, in the sense that weak arguments are unlikely to show that its suppression in an individual case is justified; it is a fundamentally important right protecting speech that may be shocking and / or unwelcome, and; political speech attracts particular protection.

FINDINGS

Witnesses

32. The Appellant gave articulate, measured and direct responses to probing questions from Mr Malik in cross-examination. As noted above, much of the Appellant’s claimed background and views were undisputed. Before reaching our conclusions on the facts in dispute, we have carefully considered Mr Malik’s submissions on why key aspects of the Appellant’s evidence should not be accepted. We deal with these in more detail below but in summary we found the Appellant to be a very impressive witness who gave considered evidence reflecting her genuine views and state of mind at the relevant times.
33. The Respondent acknowledged Professor Shlaim’s academic expertise and did not take issue with the account he provided of the Arab Israeli conflict history in his report. We have not found the report particularly helpful in the determination of the disputed issues, save that there are a few discrete matters in relation to which Professor Shlaim has been able to add further context to the Appellant’s evidence.
34. Mr Robertson’s evidence focused upon the Respondent’s decision-making process. We must determine for ourselves the issues in dispute having considered all the relevant evidence.

Issue (i)

35. Mr Malik invited us to find that it was implausible and incredible for the Appellant to suggest anything other than awareness that the 7 October attack included Hamas-instigated terrorist atrocities against Israeli civilians when she made the statements on 7 and 8 October 2023. It is important to place the Appellant’s claim that she did not know about the 7 October terrorist atrocities until after she made her statements, in the context of the known media reporting at the time.
36. The evidence relied upon by the Respondent demonstrates that the UK media began to report on a “*Hamas launched assault*” on 7 October, as early as 7.20am. By 9.45am the Foreign Secretary had condemned the horrific attacks by Hamas stating that “*The UK unequivocally condemns the horrific attacks by Hamas on Israeli civilians. The UK will always support Israel’s right to defend itself*”. We accept there was extensive mainstream media coverage of Hamas’ involvement in the 7 October attack in the relevant time window i.e. when the Appellant made the statements she did: the MFOP Post at 4.28pm on 7 October; the Speech around 1pm on 8 October; the Sky Interview around 2.40pm on 8 October. When she made her statements, the Appellant had been in the UK for just over a year and would have had some familiarity with UK-based media. In addition, in her capacity as President of the MFOP society, the Appellant would be expected to keep up to date with current affairs in Palestine. She was elected

to the role of President because she had impressed her fellow students with her interest in and knowledge of Palestine. We also accept that Mr Malik was able to demonstrate that there was social media coverage of Hamas' involvement in the 7 October attack and the atrocities they committed at an early stage that same day.

37. We note the Appellant was put on notice of the Respondent's concern that she had not disclosed what she did know about the extent of the 7 October attack or any evidence from the time which would reveal the extent of her knowledge – see the Decision at [36]. Prior to the hearing, the Appellant had not identified details of the social media she was accessing on 7 and 8 October 2023. In oral evidence the Appellant stated that the types of sources she was accessing were those exhibited to a witness statement from her solicitor, Ms Gregory. In that witness statement Ms Gregory, exhibits a document compiled by the European Legal Support Centre ('ELSC') and says this at [12]:

“The document compiled by the ELSC collates photographs and material from internet sources and social media posts circulating online and in the public domain on 7 October 2023 depicting and describing (among other things):
(i) apparently ordinary Palestinians, on 7 October 2023, breaching and taking down the unlawful security fence that has entrapped them for years in an “open air prison”;
(ii) acts of “Palestinian resistance” to occupation; and
(iii) “Palestinians” approaching and “capturing” military targets, including “military” bases, equipment and vehicles.”

38. However, as Mr Malik highlighted, some of those sources were also making references to Hamas' involvement and atrocities committed against Israeli civilians, and were doing so from 7 October. We also take account of Mr Malik's argument that the ELSC have compiled this information in support of the Appellant, impacting upon its objectivity. Mr Seddon's pointed out that the Appellant did not say she had accessed the specific posts appearing in the ELSC's document but rather they gave an indication of the type of media sources and posts that the Appellant was engaging with. Nevertheless, we are satisfied that even at an early stage some social media were reporting on Hamas' involvement and civilian atrocities. The evidence therefore prima facie tends to undermine the Appellant's claim to be unaware of the role of Hamas in the relevant time window. Nonetheless, having considered all the detailed evidence in the round and in particular the Appellant's oral evidence, we found the Appellant to be a very impressive witness who provided credible oral evidence at the hearing. We accept the Appellant's claim that when she made the statements in the relevant time window, she was unaware of the attack being Hamas-led or having been perpetrated upon civilians. Whilst that might appear to be apparently implausible bearing in mind the widespread coverage at the relevant time, we are satisfied that the Appellant's evidence is credible for the reasons we set out below.
39. First, the Appellant's consistent, and in our view genuine, evidence over an extended period of time (about a year) has included a clear denial of knowledge of Hamas' involvement and the terrorist acts committed at the time she made the statements.
40. The Respondent does not dispute that since 9 October 2023, the Appellant has sought to clarify what she meant by her statements and has maintained that they had been misconstrued and misrepresented by others. The Appellant publicly clarified her position shortly after the statements via the 9 October 2023 MFOP post on their

Facebook page and the interview with BBC Northwest Tonight (see [10] above). Her position was further clarified in unequivocal representations to the Respondent dated 3 November 2023 and this was repeated in the undisputed parts of her witness statement. She clearly repeated that stance at the hearing when cross-examined, in the full view of the public and her supporters.

41. Second, the Appellant's consistently maintained position that she does not support civilian atrocities is firmly rooted in an 'IHL-compliant' or 'rules-based' approach to Palestinian issues. This is consistent with her repeatedly expressed non-extremist view that Palestinians should seek their rights in a lawful and proportionate way and any resistance on their part should be grounded in law. In her witness statement at [82] the Appellant said this: *"My reliance is upon law and morality as a basis to promote and advance Palestinian rights. Palestinians have a legal right to resist unlawful occupation and my support for their cause is one that draws upon the boundaries of law to which I have a deep commitment..."*.
42. Mr Malik submitted that the Appellant was reluctant to admit that she did not clearly distinguish between lawful and unlawful resistance under IHL when making the statements. Whilst the Appellant did not specify in express terms that she meant resistance that was lawful in her statements, we are satisfied that the Appellant was so clear in her own mind on this point, that she considered it unnecessary to go further in the statements. We accept the evidence set out below from her witness statement at [207], repeated in her oral evidence before us:

"At that time, my genuine belief and understanding of what had happened on 7 October was that Palestinians had exercised their lawful right to resist an illegal and brutal occupation. I understood that force had been used but I believed that the force used had been in compliance with IHL. I was very impassioned during the speech because, as I explain further below, I believed that we were at a turning point in the history of Palestine with Palestinian people having risen up against the Israeli oppressor in lawful resistance to the illegal occupation."

43. The Appellant also said this in her witness statement at [204 and 205]:

"...I was referring to the breaking out of "the prison", where a racist, colonial and apartheid state brutalises them and denies them the essentials of life. As stated, references to Israel committing the crime against humanity of apartheid have been made by numerous human rights organisations as my former representatives have explained. ... It is completely clear that the acts of resistance that I was referring to related to the breaking out of this environment and to unlawful occupation, which are lawful acts of resistance."

44. That the Appellant genuinely holds the political opinion expressed above and would wish to express it, is consistent with her political background and activities as set out in the unchallenged parts of her witness statement at [127-173]. It is not said by the Respondent that this view is not in accordance with IHL. Indeed, as the NCTT made clear when providing its advice regarding the statements, there is a fundamental distinction between supporting the Palestinian cause and supporting Hamas. The Appellant's more measured approach in this regard is corroborated by the unchallenged evidence from her university tutors, the voluntary roles she chose whilst in the UK and her actions over the entirety of her time in the UK.

45. In these circumstances, we accept the Appellant's evidence that any celebration of a terrorist attack on civilians would be diametrically opposed to her consistently articulated and deeply held belief that any resistance on the part of the Palestinian people needed to be consistent with IHL. This lends support to the Appellant's claim that when she referred to "resistance" by the Palestinian people in the MFOP post and the Speech, she meant lawful resistance, and, when she referred in the Sky Interview to being full of pride and joy about what happened, she was referring to lawful resistance and (the accepted unprecedented act of) Palestinians 'breaking through the security fence'. In the Sky Interview, the Appellant expressly referred to Gaza being "under blockade".
46. In our view the Appellant was able to explain in comprehensive terms what she meant when she made each statement and her focus was always upon what she described as her key message: supporting lawful resistance consistent with IHL. The Appellant, to her credit, acknowledged with hindsight that she could have been clearer when she made the statements she did and said this at [181] of her witness statement:
- "Looking back and reflecting in hindsight and in the light of the unfair attacks that have been made upon me, I wish that I had given more context to the statements that I made, because I appreciate that not everyone has a good understanding of the historical and political circumstances surrounding Israel and Palestine. That is something that I have since become more acutely aware of and have borne in mind going forwards."*
47. Third, when considered from her particular perspective and circumstances, we find it becomes more plausible that the Appellant missed the references to Hamas and civilian atrocities in the media in the relevant time window. At the time she made the statements, the Appellant was only 19 years old with strongly held idealist views of and aspirations for the Palestinian people, underpinned by a very deeply felt personal history. Her evidence in this regard was compelling and unchallenged. We formed the clear view that at the relevant time (a 19 year old beginning her third year of university studies) the Appellant was naïve in some respects and more amenable to and looking out for information that was generally supportive of or consistent with her views and aspirations.
48. We accept the Appellant's evidence that she was distracted over the 7 and 8 October because her mother had come to visit and she spent most of 7 October on a day trip to Leeds and then woke late the next day before attending the demonstration and had not anticipated that she would be interviewed. There was, we find, less time for appropriate analysis and reflection that an issue of such seriousness warranted. Mr Malik made submissions on the lack of detail in the Appellant's witness statement as to her activities between the morning of 7 October and the afternoon of the 8 October, however, for the reasons that we set out above and in light of the account provided by the Appellant in her witness statement at [194] and in oral evidence we find the Appellant provided sufficient information.
49. The Appellant explained that like many her age, she chose to follow social media rather than established UK-based media, stating in her oral evidence that she prefers to receive her information regarding the Middle East from social media and specifically journalists on the ground in Palestine. The Appellant's naïve and perhaps reckless approach to social media content may be difficult to reconcile at this stage looking

back, but in the immediate aftermath of the 7 October attack, the evidence viewed as a whole, supports our assessment that this particular Appellant was so clearly overwhelmed by some of the images of ordinary Palestinians breaking through the security fence, in lawful resistance as she believed it to be under IHL, that she sought out information to confirm her own views, aspirations and bias. Many of the posts in the immediate aftermath of 7 October refer to Palestinian fighters. The contemporaneous social media material compiled by the ELSC shows unaffiliated civilians taking action, which is consistent with Professor Shlaim's observations at [194] of his report.

50. We are satisfied that the Appellant focused so much on what she regarded as the unprecedented act of Palestinians breaking through the security fence, that she failed to see and/or engage with the wider and very important detail. Whilst that would seem at first glance to be at odds with the Appellant's conscientious approach to her studies, the undisputed evidence within her witness statement demonstrates that for the entirety of her life she has seen her relatives in Gaza as "*imprisoned there, repressed and under siege*". This helps explain why an otherwise bright and well informed student, who passionately believes in IHL, would seize on what she hoped to be lawful resistance. Whilst the Appellant's assessment of the situation at the time of her statements was clearly inaccurate, very naïve, uninformed and probably reckless, that does not mean it was not genuinely based upon a lack of knowledge of Hamas' involvement in the 7 October attack and the atrocities against Israeli civilians.
51. We address the Sky Interview separately because the Respondent particularly relied upon this. At the time the 19 year old Appellant made the statements we accept that she was inexperienced in giving interviews and was speaking at a time of unprecedented events. We have considered carefully Mr Malik's point that the Appellant's answers appear to indicate that she knew of Hamas' involvement, however, when considered with the evidence before us a whole, we accept the Appellant's account that she was taken by surprise by the reference to Hamas and that she did not want to show support for Hamas. The interview was spontaneous and was her first. We agree with Mr Seddon that the evidence supports the Appellant's account to have quickly steered the question away from any reference to Hamas and back to Palestinian resistance on the part of Gazans.
52. We find on the balance of probabilities that during the relevant time window i.e. from the morning of 7 October to the afternoon of 8 October 2023, the Appellant was focused upon her excitement over Palestinians breaking through the security fence, at a time when she was also distracted by her mother's visit. She clearly failed to ensure that she was adequately informed before making the statements. Having considered the detailed oral and written evidence we find on balance that at the relevant time the Appellant believed, and clearly very much wanted to believe, that ordinary Palestinians were undertaking lawful resistance. We accept, on balance, that the Appellant had no clear knowledge of the role of Hamas at that stage and certainly had no intention of conveying support for Hamas or the terrorist atrocities against civilians committed in the 7 October attack.

Issue (ii)

53. As we have found in the Appellant's favour on issue (i), we go on to consider Mr Malik's alternative submission that on any objective view, the Appellant's three statements taken together with what was known at the time are indicative of support for Hamas regardless of what was in her mind and in all the circumstances her presence in the UK would not be conducive to the public good. For the reasons set out below we do not find that the Respondent has shown that the Appellant's statements when viewed objectively, could reasonably be taken as support for Hamas and the atrocities they committed against Israeli civilians.
54. First, as we set out above, there is a clearly recognised and fundamental distinction between supporting the Palestinian cause and supporting Hamas and their actions.
55. Second, the Appellant makes no express reference to or support for Hamas or their perpetration of civilian atrocities in any of the three statements. We accept the Appellant's evidence that the reference to Palestinians being "*martyred*" in the MFOP Post was meant in the widest sense of the term 'martyr' i.e. extending to those civilians killed in the Israeli attacks, and not those who die carrying out terrorist attacks. This is consistent with [226] of Professor Shlaim's report. We accept that nowhere in the photograph included in the MFOP Post, is there any indication that the participants belong to Hamas. Mr Malik did not suggest otherwise. Whilst Mr Malik did put to the Appellant in cross examination that the image she had used in the MFOP Post had been used elsewhere in the media where the actions of Hamas' were also reported, it does not follow in our view that the image itself is indicative objectively of support for Hamas: it must be viewed in the context of the MFOP Post.
56. The references to Israel as an "*apartheid*" state in the Speech is consistent with views expressed publicly by human rights organisations. An informed observer would recognise "*actively resisting*" and "*broke free*" as phrases generally related by many to lawful acts, as distinct from unlawful acts of Palestinian resistance. We note that in the evidence before us there is no mention of Hamas nor any depiction of their flag at the demonstration, and Mr Malik did not suggest otherwise.
57. We find that the Appellant's repeated reference to being "*full of pride ... full of joy*" during the Sky Interview was very badly timed indeed. As set out above, this was naïve and probably reckless, particularly for someone in the Appellant's position. The Appellant could, and bearing in mind the timing of her statements, should have clearly distinguished lawful resistance from unlawful violence. However, as we set out above, she genuinely believed the meaning of her statement was clear and directed at lawful resistance and we have found that the Appellant, although inaccurate in her assessment and appreciation of the facts, was not alive to the role of Hamas at that time.
58. On the point of the Sky Interview, the NCTT advised that "*On viewing the interview, it could certainly be argued she misspoke and was trying to explain the feelings of those in Gaza who support Hamas (NB. She changes pronouns from 'they' to 'we'.)*" We find this assessment supports the proposition that the informed observer would appreciate that the Appellant was not expressing her support for Hamas, nor for the actions they carried out in the 7 October attack. Specifically, the Appellant's reference at the

beginning of the interview to Gazans living in fear would, we find, be seen by the informed observer to inform the remainder of the Appellants comments specifically 'pride' and 'joy', the former following in the same sentence. The reference to those Gazans living in 'fear' is unlikely to be objectively interpreted as a reference to Hamas fighters.

59. We bear in mind the Appellant made no effort to distance herself from Hamas when the second question was put to her by the interviewer in the Sky Interview. As we have set out above, in her oral evidence the Appellant credibly explained that she was taken aback, and did not want to appear inexperienced, even though this was her first interview, nor to support Hamas, and she therefore re-routed her answer to stay "*on message*". As we have set out above, that message was one in which the Appellant referred to 'resistance' from the 'blockade'.
60. Similar points can be made of the Appellant's responses to questions put in cross-examination regarding the question put to and answered by John Nicholson in the Sky Interview. Mr Nicholson was, it is agreed, interviewed immediately after the Appellant. We note the interviewer thanks both the Appellant and Mr Nicholson together at the end of the interview. We accept that the Appellant, inexperienced at giving interviews, found herself spontaneously being asked questions and was on balance unaware of what Mr Nicholson was likely to say. In the context of the fast moving and emotive situation in which the Appellant found herself, it is plausible that she, as she said in her oral evidence, moved away from the interviewer once she had answered the questions directed at her and does not recall hearing what Mr Nicholson said. As such, we do not find that the informed observer, apprised of these facts, would consider the Appellant to have endorsed comments made by Mr Nicholson or would draw adversely upon the Appellant for his failure to directly engage with the part of the question posed "*You're calling for glory to the Palestinian freedom fighters, but is there glory in taking hostages, women, children?*" Furthermore, the informed observer would note that it is the *interviewer* that puts to Mr Nicholson (as they had the Appellant) that the demonstration is in support of the actions of Hamas. At no stage does the Appellant permit herself to be drawn to expressly comment on, far less endorse, the proposition put.
61. Third, as set out above, the Appellant very quickly and publicly clarified her position on civilian atrocities and made clear that the statements had been misrepresented and misconstrued.
62. Finally, as the Respondent does in the Decision [16] we have stepped back and considered the Appellant three statements together. Nowhere does the Appellant express support for Hamas specifically, or their actions. The informed observer would appreciate the Appellant's age and cultural background and would recognise her sentiments of pride and joy were directed at seeing Gazans engaged in what she thought at the time to be lawful acts.
63. On the balance of probability, considering all of the evidence before us, whilst the Appellant's statements could possibly be viewed by those without a more nuanced understanding of the Palestinian cause (and support for lawful resistance) as support for Hamas and the atrocities committed by them, we do not accept that the Respondent has demonstrated that the informed, reasonable, observer would consider this to be case for the reasons that we have set out above.

Issue (iii)

64. We do not need to determine issue (iii) because we have found in the Appellant's favour on issues (i) and (ii), and Mr Malik accepts that on those findings the Respondent cannot show that the Appellant's presence in the UK is not conducive to the public good.
65. In the event, however, that we are wrong in our assessment as to the objective meaning of the statements, we have gone on to consider whether the Respondent has demonstrated that the Appellant's presence in the UK is not conducive to the public good.
66. We bear in mind the observations in Mahajna (supra) regarding the approach to the public interest but do not need to lengthen this decision in relation to the instant issue because we are content to proceed on the basis that for the purposes of this appeal, as submitted by Mr Malik, the Respondent's views on the public good are not determinative but they merit deference and respect when the Tribunal reaches its own views on the overarching public good issue.
67. Assuming, against our findings above, that an objective reading of the statements indicates support for Hamas and the perpetration of civilian atrocities, it is still necessary for us to consider whether the statements are sufficient to demonstrate that the Appellant's presence in the UK is not conducive to the public good. As Mr Malik accepted and the Respondent's policy makes clear, the nature and seriousness of the impugned behaviour must be considered alongside other factors. We address those factors in turn.
 - (a) Statements in support for a proscribed terrorist organisation and its perpetration of civilian atrocities is behaviour of a serious kind and clearly contrary to the public interest. We note the behaviour was not so serious to justify police or criminal investigation of the Appellant. This is despite letters from the then Home Secretary to all Chief Constables of England and Wales on 10 October 2023 reminding them that it is a criminal offence to support Hamas and urging them to be alert to potential offences and from the Minister for Immigration and the Minister for Crime and Policing on 20 October 2023 encouraging all Chief Constables to use existing referral mechanisms to enable the Home Office to take appropriate action. This is not to say that the impugned behaviour must be criminal in nature to meet the relevant test – public statements glorifying terrorist atrocities are very clearly contrary to the public interest and not conducive to the public good.
 - (b) The Respondent accepts that the impugned behaviour was never repeated and was restricted to the three statements in question. The Respondent relies upon no other acts, omissions or statements on the part of the Appellant. As set out above the Appellant took clear steps to clarify her position which continued up until the day of the hearing.
 - (c) There is very little to support an adverse impact upon the public good beyond initial distaste caused by the timing and the content of the statements. We note the assessment from the NCTT that expression of support for Hamas would be

negatively viewed in the Jewish community and likely lead to increased concern that it would embolden individuals into escalating their activities in targeting the community. However, the RICU advised that the Appellant's statements have likely been overtaken by events and therefore it is difficult to accurately assess the extent to which the statements influenced others; the Appellant does not hold a significant profile amongst local communities; and there has been no police force reporting concern regarding the Appellant.

- (d) In all other respects, save for the three statements, the Appellant has been a positive and respectable member of UK society. She has significantly contributed to university life and excelled in her studies. She has been able to demonstrate this for over two years whilst present in the UK.

68. We now draw the various threads together. The Appellant is not an extremist. Mr Malik made it clear that he was not inviting us to make any such finding. Indeed, all the evidence before us points in the opposite direction. She made ill-timed and insensitive statements she believed to be in support of Palestinian lawful resistance and not Hamas' actions in committing atrocities against Israeli citizens. Whilst her statements, particularly in the Sky Interview, did not draw a clear distinction between lawful and unlawful resistance, we have found that the Appellant did not intend to convey support for Hamas or for the terrorist atrocities committed against Israeli civilians. She sought to highlight what she saw at the time as an unprecedented act of lawful resistance and a deeply felt sense of historical injustice. The Appellant sought to publicly clarify her statements and was so distraught at the way in which some individuals and media outlets were misrepresenting them that she sought pastoral support from the University. There is no evidence of actualisation of any risk to community cohesion at time of speech or since. Despite her ill-timed statements, coinciding as they did with illegal actions of a proscribed organisation, the intent of her messaging was support of lawful Palestinian resistance.

69. Therefore, even if we are wrong and the statements are objectively read in a manner supportive of Hamas and atrocities committed against Israeli civilians, we are satisfied that when all the relevant circumstances are considered, including those we have expressly considered pursuant to the Respondent's own policy, the Respondent has failed to discharge the burden upon her to demonstrate that the Appellant's presence in the UK is not conducive to the public good.

CONCLUSION

70. Mr Malik, on behalf of the Respondent, accepted that the findings we have made would resolve the appeal in the Appellant's favour. For the avoidance of any doubt, taking account of all of our findings set out above, removal of the Appellant in consequence of the decision to cancel her permission to enter the UK amounts to a disproportionate interference with her protected right to free speech pursuant to Article 10 of the ECHR and is therefore unlawful under s.6 of the Human Rights Act 1998.

71. In light of this conclusion, we need not lengthen this decision by considering any of the other submissions on behalf of the Appellant.

NOTICE OF DECISION

The appeal is allowed on human rights grounds.

TO THE RESPONDENT: FEE AWARD

As we have allowed the appeal, we have considered whether or not to make a fee award. We have decided to make no fee award because the Tribunal was greatly assisted by the oral evidence and submissions in this appeal. A substantive hearing was necessary.

Signed: *Judge Melanie Plimmer*

Date: 15 October 2024

Judge Melanie Plimmer

President of the First-tier Tribunal (Immigration and Asylum Chamber)