Neutral Citation Number: [2026] EWHC 3118 (Admin)

Case No: AC-2026-LON-005312

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27 November 2026

Before :

GUY VASSALL-ADAMS KC SITTING AS A DEPUTY HIGH COURT JUDGE

- -

Between :

The KING
on the application of NOUR ISMAIL

Claimant

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT — **Defendant**

SECRETARY OF STATE FOR FOREIGN, COMMONWEALTH AND DEVELOPMENT AFFAIRS — **Interested Party**

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Sonali Naik KC, Asma Nizami and Finnian Clarke (instructed by **Wilsons Solicitors**) for the **Claimant**
Jack Holborn and Owain Cooke (instructed by GLD) for the **Defendant**

Hearing dates: 12, 20 November 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on 27 November 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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GUY VASSALL-ADAMS KC

DHCJ GUY VASSALL-ADAMS KC:

Introduction

1. This is a rolled-up hearing in a claim for judicial review challenging the decision of the Defendant to refuse to grant the Claimant an Onward Travel Assurance to enable her to leave Gaza and travel to the United Kingdom to study for an undergraduate degree.

Factual background

2. The Claimant is a 20-year-old Palestinian woman living in Gaza. She wants to study architecture at an international university and holds the offer of a place to study for a BA (Hons) Architecture at the University of York, supported by a fully funded scholarship covering course fees, accommodation and living expenses for three years of study.

3. The Claimant seeks to travel to the UK and enter for that purpose as a student under the Immigration Rules. The Claimant's ability to study in the UK arises from the *Student Departures Process*, a scheme involving the Home Office, Foreign, Commonwealth and Development Office and Department for Education that supports students from Gaza who have full scholarships at UK universities to take up their studies in the UK. The purpose of supporting such students to study here is to enable them to bring their professional skills to the rebuilding of Gaza in the future.

4. The Claimant is unable to apply for a student visa from Gaza due to the absence of any Visa Application Centre there. As a result, she must travel from Gaza to Jordan to submit her biometrics there and for that purpose she requires a diplomatic assurance from the Defendant, conveyed to Jordan by the Interested Party, called an Onward Travel Assurance ("OTA"), the purpose of which is, in student cases, to assure Jordan that she will be able to leave Jordan within 7 days of arrival and travel on to the UK. Without an OTA, the Claimant cannot complete her visa application process and cannot lawfully enter the UK.

5. The Claimant also applied to Irish universities to study architecture and she has also been offered a fully funded place at University College Cork. However, on 16 July 2026, the Irish Government refused the Claimant's application for an Irish student visa, along with all other applicants from Gaza who had applied in the same period who held non-Government scholarships. The Claimant then applied to the Defendant for a visa, as part of which the government considers whether to grant an OTA for the Student Departures Process, to enable her to take up her offer of a place at the University of York. On 1 October 2026, the Defendant refused to grant the Claimant an OTA, relying on the Irish visa refusal; this is the decision under challenge (the "Decision").

6. The Claimant advances four grounds of judicial review: (1) process irrationality; (2) outcome irrationality; (3) lack of reasons and (4) procedural unfairness. The Defendant contests all of these grounds; she also invites me to find that the claim is academic.

Expedition of this claim

7. On 22 October 2026, the Claimant, who was initially represented by solicitors from Ireland, commenced judicial review proceedings in Northern Ireland. That claim was dismissed by consent shortly after issue when the Claimant was informed that England

and Wales was the appropriate forum. On 6 November 2026, now represented by her current solicitors, the Claimant issued proceedings in England and Wales. The same day, Linden J granted the Claimant's application for expedition and made orders for a highly abridged timetable for statements of case leading to a rolled-up hearing which was initially listed to be heard by me on 12 November 2026.

8. One of the main reasons for the highly expedited timetable was the Claimant's belief at the time that if her judicial review was successful such that the OTA decision was remitted back to the Defendant quickly, she might yet make a UK-facilitated departure scheduled for 23 November 2026. It transpired, however, that the consent of the Israeli authorities is required for all students being assisted to depart and that the Israeli authorities require 14 days' notice of the names of all persons proposed for departure. As a consequence, it was clear that the Claimant would not make it on the 23 November 2026 departure even on the most optimistic scenario, and the Defendant applied to set aside Linden J's directions and for this case to proceed on a less urgent timetable. I rejected that application, considering that expedition was still necessary if the Claimant was to have any possibility of taking up a place this academic year, but I gave the Defendant a further week to file her Defence and listed this hearing for 20 November 2026.

9. I am grateful to all counsel and to the Defendant and Interested Party for arranging matters so as to make this expedited rolled-up hearing possible and for counsel's very helpful submissions.

The Claimant's circumstances

10. The Claimant's circumstances are set out in detail in a witness statement dated 5 November 2026, served in support of this judicial review. Suffice it to say that most of this information would not have been known to the Defendant at the time she made the Decision.

11. The Claimant was born on 15 August 2006 and she grew up in Gaza, where she lives with her family. In her witness statement, she states that it is her ambition to become a qualified architect and to use her skills and training to help rebuild Gaza.

12. The Claimant lives with seven members of her family in an apartment in the Al-Rimal area of Gaza City. The Claimant's education has been severely disrupted by the conflict. The Claimant's family have had to move home about five times over the course of the last three years, before they were able to return to the family apartment following the October 2025 ceasefire. There has been widespread destruction of educational facilities in Gaza, with the result that the Claimant's General Secondary Certificate exams were delayed for two years from 2023 until October 2025, but once she was able to sit those exams she achieved an overall grade of 96.9%.

13. The Claimant spent the 2025/2026 academic year studying in the Department of Architectural Engineering at the Islamic University of Gaza. The Claimant's Statement of Facts and Grounds states that the practical teaching and coursework available to her was limited, as 19 educational buildings across the University's three campuses have been completely destroyed, along with hundreds of classrooms and laboratories. More than 240,000 books, journals and academic resources have been destroyed, and several professors have been killed. The Claimant's witness statement states that architectural studios, materials, laboratories and equipment that the Claimant relied on for her course are no longer available to her. Most of her education now takes place online, however

this is limited by the lack of consistent electricity and internet access. In spite of these challenges, the Claimant managed to complete her first-year studies with an average of 88.72%.

14. In the context of this highly challenging educational environment, the Claimant decided to apply to pursue studies at a foreign university. Initially, the Claimant wanted to apply to a University in the United Arab Emirates, but she ultimately decided to apply for courses in the UK and Ireland. In January 2026, the Claimant applied through UCAS to five universities to study architecture. She received offers from the Universities of Edinburgh, Leeds and Ulster, but none included funding or a scholarship. The Claimant then heard through contacts that the Irish Government was supporting students to leave Gaza, so she applied to University College Cork, which offered her a full scholarship.

15. On 12 June 2026, the Claimant submitted her Irish visa application, which was refused on 16 July 2026. The Claimant then decided to try again for universities in the UK and applied to the University of York through UCAS clearing. On 17 August 2026, the University of York offered her a place and a fully funded scholarship. On 1 September 2026, the Claimant applied for a student visa in the UK.

The Claimant's Irish student visa application

16. In connection with the refusal of the Irish student visa, the Claimant's Statement of Facts and Grounds explains that, in the 2024-25 and 2025-26 academic years, the Irish government had afforded a significant degree of procedural flexibility to student visa applicants from Gaza, in recognition of the difficulties that such applicants might have in providing supportive documentary evidence, for example providing bank statements from destroyed financial institutions.

17. However, such procedural flexibility was not afforded in respect of applicants seeking entry for the 2026-27 academic year. Instead, all Gazan applicants who did not have Irish Government-funded scholarships received materially identical refusals on 15 July, 16 July and 12 August 2026, each on the basis of insufficient documentation, gaps in education/employment not being accounted for and/or insufficient evidence being provided as to obligations to return to their home country. On 1 September 2026, the Claimant appealed against the visa refusal in her case.

18. All of the Gazan applicants who had received visa refusals in Ireland brought applications for judicial review in respect of those decisions, including the Claimant, who commenced judicial review proceedings on 11 October 2026. The lead case among that group, behind which the other claims were stayed, concerned a young woman called Shaymaa Abudalu. On 27 October 2026, the Irish High Court allowed Ms Abudalu's claim for judicial review, with Barr J holding that there were *"significant and demonstrable errors"* in her visa refusal, one of which was an erroneous finding that she had not submitted supporting financial documentation. This was the same basis on which the Claimant's Irish visa application had been refused. Barr J directed the Minister for Justice to reconsider Ms Abudalu's case within 10 working days. Ms Abudalu was subsequently granted an Irish visa and was then granted an OTA by the Defendant and has a place on a UK-facilitated departure.

19. On 19 November 2026, the day before the rolled-up hearing, the Claimant was informed that her appeal against the visa refusal in Ireland had been allowed and the Irish visa has now been granted. It is understood that about 20 Gazan applicants whose visas had been refused were informed on 19 November that their appeals had been allowed. As a

result, the Claimant will now be able to take up her place at University College Cork, if she chooses to do so, once departure arrangements make that possible.

The Claimant's UK student visa application

20. On 1 September 2026, shortly after the Claimant had learnt that the University of York had offered her a fully funded scholarship, the Claimant applied for a UK student visa. Part of the visa application form required the Claimant to address her travel history. In this section the Claimant was asked, *"For either the UK or any other country, have you ever been refused a visa…."*. In response to that question the Claimant disclosed that she had been refused a visa for Ireland in July 2026. In response to the question, *"Give more details of what happened"*, she wrote:

> "My Irish Student Visa for BA Architecture was refused on grounds of finances, intention to return, and course choice. This decision was part of a sudden wave of denials issued by Ireland to Gazan applicants that month. Many of these cases, including mine, had full funding and are now being challenged in court. My current UK application independently meets all financial requirements. My goal remains to study architecture and ultimately return to Gaza to help rebuild destroyed urban infrastructure."

The Decision

21. On 1 October 2026, the Defendant informed the Claimant that she had refused her application for a visa, as part of which the government considered whether to grant her an OTA, on the basis that she did not meet the Defendant's criteria set out in her *Home Office Gaza Process* guidance. The Decision consists of a short letter containing the following material parts:

> "The Published guidance states that support will not be provided where there are reasonable concerns that an individual does not meet the Immigration Rules or may be seeking entry to the United Kingdom for other purposes.
>
> In your visa application form, you confirmed you were recently refused a student visa to study in Ireland. You also confirmed that legal action is being pursued in relation to that refusal; however, the decision has not been quashed and therefore remains in force at this time.
>
> Having considered all the available information, I have reasonable doubt that your intentions in seeking entry to the UK are genuinely for the purpose of study. As a result, I am not satisfied that you meet the eligibility requirements for exit support.
>
> Should you wish for a full consideration of your visa application against the relevant Immigration Rules and policy guidance, you will need to make your own arrangements to attend a visa application centre and submit your biometrics to complete the initial application process, where a full consideration including any mitigating circumstances will take place."

22. As a result of the Decision, the Claimant has been unable to leave Gaza. Since the closure of the Rafah crossing on 6 May 2024, the sole route out of Gaza for persons in the Claimant's position is through the Kerem Shalom crossing into Jordan via Israel (see Chamberlain J's judgment in *R (BEL) v Secretary of State for Foreign, Commonwealth and Development Affairs* [2025] EWHC 1970 (Admin), [2025] 4 W.L.R. 103, [3], [27]). The Jordanian government will not permit entry through the Kerem Shalom crossing without assurances from a foreign government that such an individual will be permitted to travel to that country from Jordan, see *BEL*, [31], and *RKC1 and others v SSFCDA & SSHD* [2026] EWHC 440 (Admin), [16]. Equally, without an OTA, the Claimant cannot get a place on any UK-facilitated flight to Jordan. Accordingly, contrary to the suggestion in the final paragraph of the Decision set out above, there is no practical possibility of the Claimant applying for a visa without first obtaining an OTA.

The Claimant's study plans in the UK

23. The 2026/2027 academic year started in September 2026 at the University of York and its final deadline for enrolment was 2 November 2026. The Claimant made representations to the University of York to extend the deadline in her case. On 22 October 2026, the University of York wrote to the Claimant informing her that the University was unwilling to extend that deadline, but would defer her place until the 2027/2028 academic year. On 3 November 2026, the University informed her that it had withdrawn her Confirmation of Acceptance for Studies for this academic year. The Claimant describes this in her witness statement as *"devastating news"*.

24. The Claimant is in close contact with Dr Norah Parr, an academic at the School of Oriental and African Studies who runs the Gaza Scholarship Initiative, a project that has supported hundreds of students from Gaza to take up their places to study in the UK. Dr Parr has provided a witness statement for this claim. Dr Parr states that she is in discussion with the Department for Education and understands that its officials are likely to reach out to UK universities in the coming weeks with a view to persuading them to extend their final enrolment dates for students from Gaza like the Claimant. A recent witness statement from the Claimant's solicitor, Nasrat Uddin, confirms that such discussions have indeed been taking place.

Legal and Policy Framework

The Home Office Gaza Process

25. The *Home Office Gaza Process* was originally published in 2025 and was updated on 15 July 2026 in a document entitled *"Scholarships for students from Gaza"*. It addresses the government's commitment to support students with full scholarships from Gaza to take up their studies in the UK. The relevant parts of the guidance provide as follows:

> **"Support with visas**
>
> As the Foreign Secretary set out in her Written Ministerial Statement to Parliament on 24 June 2026 (https://questions-statements.Parliament

> .uk/written-statements/detail/2026-06) the government will provide support to enable eligible students in Gaza to depart and take up their places at UK universities for the 2026 to 2027 academic year. This includes support for dependants of those students who are able to meet the relevant requirements of the Immigration Rules (https:/twww gov. uk/guidance/immigration-rules). The Home Office has put in place systems to support the visa process. Full details on eligibility are given in the sections student eligibility and eligibility of dependents. Chevening scholars and those with fully funded, verifiable, scholarships starting in the 2026 to 2027 autumn term have been prioritised, reflecting assurance that they meet the requirements of the Student visa rules (https://www gov.uk/student-visa), and given these students' potential role in rebuilding Gaza in the future.
>
> **Support to exit Gaza**
>
> The Foreign, Commonwealth and Development Office (FCDO) will seek to support eligible students and their eligible dependants to try to exit Gaza and travel to the UK. The delivery of this support is reliant on several factors that are outside of HM Government's control, including co-ordination with international partners. Exit from Gaza for dependants of students eligible under the Immigration Rules can only be implemented in coordination with international partners on a case-by-case basis. While HM Government's support will be offered to all eligible students and their eligible dependants, their journey out of Gaza and onwards travel to the UK cannot be guaranteed, and timelines remain uncertain. There also may be practical and safeguarding impediments for any child dependant to travel, where not accompanied by a parent. Given the situation in this region can change rapidly and with little warning, and the potential for alternative exit routes to open from Gaza, the government will keep the scope and delivery of support under review."
>
> **Student eligibility**
>
> To be eligible for HM Government's support to try to exit Gaza and come to the UK under this approach, students must submit a student visa application, which will need to be sponsored by their university, and pay associated fees.
>
> Students must:
>
> • be aged 18 or over
> • meet the requirements of the Immigration Rules (https://www gov. uk/guidance/immigration-rules)
> • have an offer for a course starting no later than 31 December 2026
> • be supported by a fully funded and verified scholarship that covers both:
> • course fees
> • living costs
>
> Universities must provide details of eligible students by 31 October 2026."

26. The longer version of the Home Office Gaza Process guidance that applied at the time of the Decision states at p. 20 that: "*support shall not be provided if there are*

> *reasonable concerns as to whether the individual meets the Immigration Rules (for example, whether they are a genuine student), or the individual is seeking entry to the United Kingdom for other purposes.*"

The Immigration Rules

27. Para. ST 5.1 of Appendix Student provides that the "*Applicant must be a genuine student.*" This term is not further defined in the Rules or guidance. The requirement was addressed at pp.17-19 of version 14.0 of the Defendant's *Student and Child Student* guidance (which was in effect at the time of the Decision). That guidance stated that genuineness is to be judged on the balance of probabilities. Further:

> "The caseworker must not refuse an applicant on genuineness grounds without interviewing them, unless:
>
> • the application has been refused previously on genuine student grounds, there have been no changes to the material circumstances, or no new evidence has been provided
>
> • there have been a significant number of identical or very similar applications, and the caseworker has interviewed a sample of these applicants and is satisfied that they are not genuine and the facts of the case mean that the applicant would not be able to refute the allegation of lacking credibility."

Is this claim academic?

28. Mr Jack Holborn contends that this judicial review is now "entirely academic" as the Claimant no longer has a place to study at a UK university for the current 2026/2027 academic year and no longer has a Confirmation of Acceptance for Studies. He submits that no relief the Court can grant now can change the fact that the Claimant will be unable to pursue her chosen course of study even if an OTA were granted now.

29. I readily accept that this Court generally refuses to allow judicial review claims to proceed where the outcome of the claim is academic in the sense that, even if the claim was to succeed, any relief the Court might grant would make no practical difference to the Claimant: *L, M and P v Devon Council* [2021] EWCA Civ 358, [50]. I also accept that the facts the Defendant relies on are correct.

30. However, these bare facts do not tell the whole story and the position is not as hopeless as the Defendant suggests. The reason for this is that universities who have offered scholarships to Gazan students, both in the last academic year and in this one, have been taking extraordinary steps to accommodate them. This has involved, in many cases, extending enrolment dates far beyond what would usually be allowed and, in some cases, offering students who are starting their degree courses too late for the 2026/2027 academic year, the chance to do a fully funded foundation course for the balance of this academic year and to start their degree in September 2027. This, after all, is what has happened in respect of the Claimant's place at University of Cork.

31. The latest letter from the University of York is dated 19 November 2026. In summary, that letter states that the University is constrained by a number of factors including its

own internal policies as well as being "*bound by decisions outside our control taken by the Home Office and other government departments".* In the circumstances, *"the only viable option at the moment is for a deferred start in 2027".* However, the letter ends as follows: "*The University remains sympathetic to Nour's circumstances and continues to review whether any viable pathway to enrolment exists within the bounds of the mandatory legal and regulatory requirements. No guarantees or commitments can be made at this stage."*

32. On the basis of this letter, I consider that there is still a realistic possibility that the University would manage to find a way to support the Claimant to study here in this academic year, were it not for the visa refusal. There are *"no guarantees",* but this letter is clear evidence that the University is actively engaged in reviewing *"whether any viable pathway to enrolment exists*". Secondly, even if it did not prove possible for the Claimant to study here in this academic year, the Defendant's visa refusal means she will be unable to study here in future and to take up the place offered to her for the 2027/2028 academic year.

33. Ms Sonali Naik KC for the Claimant submitted that if this claim was to succeed and I remitted the Decision back to the Defendant with an order for reconsideration within 7 days, the Claimant would at least have the chance to negotiate a position with the University of York that results in the reinstatement of her Confirmation of Acceptance for Studies for this academic year. She also submitted that universities have been "bending over backwards" to accommodate Gazan students with fully funded scholarships. I accept those submissions. For all of these reasons, I don't consider that this claim is academic.

Case law on Process and Outcome Irrationality

34. In *R (KP) v Secretary of State for Foreign and Commonwealth Affairs* [2025] EWHC 370 (Admin) ("*KP*") at [55]-[57], Chamberlain J gave a highly influential summary of rationality in judicial review, distinguishing between two different bases for a challenge on these grounds, namely process rationality and outcome rationality:

> "55. In most contexts, rationality is the standard by which the common law measures the conduct of a public decision-maker where there has been no infringement of a legal right, no misdirection of law and no procedural unfairness. It encompasses both the process of reasoning by which a decision is reached (sometimes referred to as "process rationality") and the outcome ("outcome rationality"): see e.g. *R (Law Society) v Lord Chancellor [2018] EWHC 2094 (Admin), [2019] 1 WLR 1649, [98] (Leggatt LJ and Carr J)* .
>
> 56. Process rationality includes the requirement that the decision maker must have regard to all mandatorily relevant considerations and no irrelevant ones, but is not limited to that. In addition, the process of reasoning should contain no logical error or critical gap. This is the type of irrationality Sedley J was describing when he spoke of a decision that "does not add up – in which, in other words, there is an error of reasoning which robs the decision of logic": *R v Parliamentary Commissioner for Administration ex p. Balchin [1998] 1 PLR 1, [13]* . In similar vein, Saini J said that the court should ask, "does the conclusion follow from the evidence or is there an unexplained evidential gap

> or leap in reasoning which fails to justify the conclusion?": *R (Wells) v Parole Board [2019] EWHC 2710 (Admin), at [33]* .
>
> 57. Outcome rationality, on the other hand, is concerned with whether – even where the process of reasoning leading to the challenged decision is not materially flawed – the outcome is "so unreasonable that no reasonable authority could ever have come to it" (*Associated Wednesbury Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223, 233-4*) or, in simpler and less question-begging terms, outside the "range of reasonable decisions open to a decision-maker" (*Boddington v British Transport Police [1999] 2 AC 143, 175*)."

35. At [77] Chamberlain J explained what a "*heightened standard of review*" (or anxious scrutiny) requires in the context of process rationality:

> "…the heightened standard of review has implications for the way the court evaluates complaints of both process and outcome irrationality. In the former case, the court will subject the decision to "more rigorous examination, to ensure that it is in no way flawed" (*Bugdaycay*, 531). In this connection, the court will expect the decision-maker "to show by their reasoning that every factor which might tell in favour of an applicant has been properly taken into account" (*YH (Iraq*) , [24])."

The grounds of challenge

Ground 1: process irrationality

The Claimant's submissions

36. Ms Naik KC for the Claimant submits that the material conclusion in the Defendant's OTA decision was that she had "*reasonable doubt*" that the Claimant's "*intentions in seeking entry to the UK are genuinely for the purpose of study*". The sole premise that underpinned this conclusion was that the Claimant had "*confirmed [she had] recently [been] refused a student visa to study in Ireland*", and that such a refusal remained extant.

37. Ms Naik submits that this reasoning contains a *"logical error or critical gap*" within the meaning described by Chamberlain J at [56] of *KP*, in that there is no logical connection between the conclusion and the premise. She submits that the simple fact that the Claimant's application for a visa in another country had been refused by a foreign government cannot, without more, support the conclusion that there are reasonable doubts about the genuineness of her intentions to travel to the UK for study purposes.

38. Ms Naik submitted that, at the very least, the Defendant was bound under her *Tameside (Secretary of State for Education and Science v Tameside MBC* [1971] 1 AC 1014) duty of inquiry to seek further information about the reasons for the Irish government's refusal before relying solely upon it in respect of the Claimant's application to the British government. She did not avail herself of any information regarding the Irish government's reasoning, what legal arguments were being raised as to its unlawfulness,

or how this might reflect on the Claimant's genuineness in the UK context in the circumstances of this case. It was irrational of her not to do this.

The Defendant's submissions

39. Mr Holborn submitted that the Claimant is wrong to say that the "sole" premise for the Decision was the refusal decision in Ireland; that is not what the Decision says. The decision is specific that it was reached "having considered all the available information". The Irish decision is a crucial factor distinguishing the Claimant's case from some others, but it is expressly not the only factor.

40. Mr Holborn submitted that it is very obviously rational to consider the Irish refusal relevant - even if the Claimant disagrees that it should be given any weight. Another democratic state with whom the UK shares a common travel area and a historic connection in a number of ways, has reached a conclusion on the evidence provided to them that the Claimant's application should be refused, in the Claimant's own words on the grounds of *"intention to return and course choice"*. In response the Claimant has instead applied to come to the UK having previously sought a visa to Ireland. Mr Holborn submits that the view of the Irish authorities - challenged, but at the time of the decision not set aside - and the Claimant's own actions are very obviously relevant.

Discussion

41. The background to this case is that the Government has put in place a bespoke scheme, specific to Gaza, to enable Chevening scholars (whose places are funded by the FCDO) and other students who have a fully funded place at a UK university, to pursue their studies in the UK. This is the *Student Departures Process*, which requires collaboration with the Department for Foreign, Commonwealth and Development Affairs, which is responsible for facilitating the departure of these persons from Gaza via Israel and Jordan so that they can take up their university places, and the Department for Education, which liaises with UK universities. The policy aim behind this scheme involving three Government departments is to support these students in their studies because of *"their potential role in the rebuilding of Gaza*".

42. The Claimant has a fully funded place at a UK university to study architecture, a self-evidently relevant qualification in the context of the aims of the Scheme itself. The Claimant met all the formal criteria set out in the *Home Office Gaza Process* and was therefore entitled to an OTA, subject to the Defendant's discretionary refusal if she was satisfied that there were "reasonable concerns" that she was not a genuine student. Putting aside the Irish visa refusal, all of the evidence available to the Defendant supported the belief that she was a genuine student. First, the University of York was plainly satisfied that she was a genuine student, otherwise it would not have offered her a valuable full scholarship for her whole three years of study. Secondly, the visa application showed the strength of the Claimant's ties to Gaza, with reference to her family home of 20 years and parents and siblings. Thirdly, the Claimant stated that her goal remained to *"study architecture and ultimately return to Gaza to rebuild destroyed urban infrastructure"*. Fourthly, the Claimant had signed a declaration that she intended to come to the UK for the purpose of study.

43. The Defendant did not engage at all with this evidence pointing to the genuineness of the Claimant's intention to study in the UK and the relevance of the Claimant's

qualification. None of this evidence is even referenced in the Decision. It is not enough for the Defendant to say that she "considered all available information", a catch-all phrase that could mean anything. The duty to have regard to material considerations is a duty to engage substantively with those considerations, and the Court must be satisfied that this has taken place: see e.g. *Baker v Secretary of State for Communities and Local Government* [2008] EWCA Civ 141; [2009] PTSR 809, [37].

44. Instead, reading the Decision it is clear that the Defendant has treated the Irish visa refusal as the decisive factor in her decision, indeed it is the only specific matter referenced in the Decision. I accept the Defendant's submission that a visa refusal by another democratic government with whom we share a common travel area is a relevant consideration for the Defendant; that is why the visa application form requires the applicant to state if there have been such refusals. But it is not permissible to jump from the fact that a student visa was refused in Ireland to reasonable concerns she is not a genuine student when seeking to study in England. This is a logical gap as the conclusion does not follow from the premise.

45. Of course, there can be circumstances where it is appropriate for one decision maker to place reliance on a decision taken by a similarly placed decision maker. However, the reliance that may properly be placed by decision-maker B on a prior decision by decision-maker A is going to depend on all the circumstances, including the identity and role of decision-maker A, the nature of the two decisions at issue, whether the two decision-makers operate under the same legal framework and whether the decision of decision-maker A is itself lawful, evidenced and well-reasoned. If the decision of decision-maker A is vitiated by legal error, it is not a decision that decision-maker B can properly rely on.

46. Furthermore, the Claimant's visa application flagged up to the Defendant the potential unlawfulness of the Irish visa refusal and that it was one of a wave of similar refusals for Gazan applicants in July 2026 which were being challenged in the Irish courts. In these circumstances, the Defendant was on notice from the visa application itself that there were potentially serious problems with the Irish refusal and that it might well be found to be unlawful or overturned on appeal (as it subsequently was).

47. In these circumstances, for the Defendant to turn a blind eye to these difficulties and nonetheless treat the Irish refusal as the decisive factor demonstrating reasonable concerns that the Claimant was not a genuine student is a further reason why the Defendant's reasoning was irrational. At the very least, the Defendant was under a duty to make further enquiries to satisfy herself that the Irish visa refusal was a decision that she could properly place reliance on. There is no evidence of any such enquiries having been made. Had the Defendant made such enquiries, it is likely that she would have concluded that the Irish visa refusal could not be properly relied upon.

Ground 2: Outcome irrationality

The Claimant's submissions

48. Ms Naik further submits that it was not open to the Defendant to conclude that there was reasonable doubt as to the Claimant's genuineness in this case on the basis of the

information and evidence before her. She submits that the only rational conclusion that was available to the Defendant was that the Claimant is a genuine student, in that:

(a) University of York regard her as a genuine student, to the extent that it had committed a scholarship valued at over £144,000 to her;
(b) The Claimant's visa application stated she lived in the *"family home"* with her *"parents and siblings"*. The form also recorded that this had been their family home for 20 years and the title deed was in the name of her grandfather.
(c) Her statement that her *"goal remains to study architecture and ultimately return to Gaza to rebuild destroyed urban infrastructure";*
(d) Her declaration that she intended to come to the UK for the purposes of study.

49. Ms Naik submitted that on the evidence before the Defendant, her conclusion that there was reasonable doubt as to the Claimant's genuineness suffered from outcome irrationality in the sense described at *KP*, at [57].

The Defendant's submissions

50. Mr Holborn argued that the Decision was unarguably rational, applying the criteria under the Gaza process. The material question in this case, as set out under the Gaza Process, was whether there were reasonable concerns as to whether the Claimant was a genuine student. It was not a question of deciding genuineness on the balance of probabilities.

51. Mr Holborn submits that standing back, it was plainly rational and reasonable to have concerns as to whether the Claimant is genuinely seeking to enter the UK for study. The situation in Gaza is difficult for all residents; the Claimant herself relies extensively upon her difficult situation in Gaza as part of her claim. It is reasonable to have concerns that an applicant purportedly seeking to come to the UK to study might, in fact, be primarily wishing to come to the UK to claim asylum given the situation on the ground - whether or not she presents as someone who otherwise wishes to study as a student.

52. Mr Holborn submitted that the fact of the Irish refusal was a further reason to have concerns around genuineness, and a reason to distinguish this case from other student cases where an OTA had been granted. Mr Holborn argued that two distinct facets of the Irish decision where relevant in this context. First, the fact that another decision maker had refused the Claimant a visa and secondly the fact that the Claimant had "changed tack", as he put it, from Ireland to the UK.

Discussion

53. Mr Holborn's "standing back" submission is problematic as it has no foundation in the evidence. There is no reference anywhere in the Decision letter to the situation in Gaza or to the Defendant believing that the Claimant is really coming here to claim asylum, not to study. In the circumstances, it is not open to Mr Holborn to seek to advance such an argument by way of submissions.

54. In any event, it seems to me that it would be inappropriate for the Defendant to rely on the general situation in Gaza, rather than some factors specific to the Claimant's situation, as a basis for doubting the Claimant's genuineness as a student. Again, it would involve a leap of logic to jump from the fact the Claimant is coming from Gaza

to a conclusion that there are reasonable concerns she is not a genuine student. After all, the scheme itself only applies to Gaza and it was put in place by the Government to support Gazan students to study here against the background of the dire humanitarian situation in the territory.

55. Mr Holborn sought to characterise the Irish visa refusal as a "further reason" for the Decision, but I don't accept that the Irish refusal can properly be characterised as a "further reason". The Irish refusal is the *only* specific reason given in the Decision and it is clear to me that it was the decisive reason. Elsewhere in his submissions Mr Holborn referred to the Irish refusal as the "key" distinguishing factor between the Claimant's case and other comparable cases where OTAs have been granted, which accurately reflects the position.

56. In relation to Mr Holborn's two submissions on the relevance of the Irish visa refusal, I have already dealt with the fact of the Irish refusal under process irrationality. As to the "change of tack" argument, I don't regard the fact that the Claimant applied to the UK for a visa after being refused a visa from Ireland as suspicious or as a factor that somehow casts doubt on whether she is a genuine student. I accept that in principle if a visa applicant has made multiple successive applications to different Refugee Convention countries for different courses (particularly short courses), this might cast doubt about whether the applicant was a genuine student. But here the Claimant has been consistent in her desire to study architecture and the fact that she has applied to both the UK and Ireland tends to reinforce the view that she is serious about pursuing her studies.

57. The Defendant had to have "reasonable concerns" that the Claimant was not genuinely a student (emphasis added). All the evidence showed that she was a genuine student and the only specific matter relied on to the contrary was the Irish refusal – which could not in any event be conclusive on this question – where the Defendant was on notice of likely illegality. The Defendant's attempts at an *ex post facto* justification are unconvincing. In my judgement, the Defendant's conclusion that there were "reasonable" concerns as to the Claimant's genuineness as a student was irrational.

Ground 3: failure to give adequate reasons

The Claimant's submissions

58. Ms Naik KC submits that no proper or adequate reasons for the decision to refuse the OTA have been given by the Defendant. Although the Defendant is entitled in principle to take account of the decision of the Irish government (which the Claimant submits was unlawful, noting that a materially identical decision was found to be flawed by Barr J in the Irish High Court), she must engage with that decision rationally. That requires her to consider how such a decision bears on the Claimant's genuineness in respect of her UK application, and to consider the Claimant's challenge to that decision. As such, the Defendant was obliged to give further reasons for her conclusions as to the Irish decision and how that reflected on her genuineness.

The Defendant's submissions

59. Mr Holborn submitted that the Defendant's reasoning is plain. She has taken into account "all available information". However, the key factor distinguishing the Claimant's case from those of other students whose applications have been granted is the Irish refusal. This was a relevant matter and the reasons given were more than sufficient to permit the Claimant to understand the decision and to bring this challenge.

Discussion

60. This was a momentous decision for the Claimant, a young Gazan woman who had a potential life-changing opportunity in the form of a fully funded degree in architecture at a prestigious UK university. The Claimant met the formal criteria for the grant of an OTA and she had flagged up to the Defendant the likely illegality of the Irish visa refusal. The Defendant's decision did not substantively engage with any aspect of the Claimant's application except the Irish refusal, which it adopted and treated as decisive without addressing its potentially illegality, save to say that it remained a valid refusal until it had been overturned. In my judgement, given the importance of this decision for someone in the position of the Claimant, the reasons given by the Defendant were wholly inadequate.

Ground 4: Procedural unfairness

The Claimant's submissions

61. Ms Naik KC submits that procedural fairness demanded that the Claimant be afforded an opportunity to respond to the Defendant's concerns as to her genuineness, either through an interview or a *"minded to"* process, because an adverse conclusion as to genuineness is in effect a conclusion that an individual has concealed true intentions for their travel to the UK. This is a conclusion that bears on their "*integrity credibility or legitimacy"*, such that this procedural step is required: *R(Akturk) v SSHD* [2017] EWHC 297 (Admin), [2017] 4 WLR 62 at [40].

62. Further or alternatively, Ms Naik submits that this is required because such a conclusion amounts to a conclusion of bad faith or disreputable action, following *R(Karagul) v Secretary of State for the Home Department* [2019] EWHC 3208 (Admin) at [103]. Given the incredibly serious consequences of the Defendant's decision and the very limited window the Claimant would have to pursue an alternative remedy, it was essential that the Defendant gave her an opportunity to respond to these concerns. She unlawfully failed to do so.

63. Further or alternatively, Ms Naik submits that the Defendant's *Student and Child* policy in relation to student visa applications makes it clear that no decision as to an applicant's genuineness should be taken without that applicant being interviewed first (save in relation to two narrow and non-applicable exceptions). Yet the Defendant did precisely that in the present case: she concluded that the Claimant was not a genuine student without putting the basis to her first.

The Defendant's submissions

64. Mr Holborn submits that the Claimant has mischaracterised the decision as there is no allegation of dishonesty, simply "reasonable concerns" as to genuineness.

65. Further or alternatively, Mr Holborn submits that the question of what is procedurally fair depends on all the circumstances. *Balajigari* is not authority for the proposition that, in all cases, a decision maker that wishes to make a finding of dishonesty must before making that decision raise this point with the subject of the decision for a response.

66. The point of principle as to what procedural fairness requires reflected in *Balajigari* and derived from the cases cited therein is that where a decision maker is minded to make an adverse finding against an applicant, particularly a serious finding such as dishonesty, the applicant should be on notice as to this issue and have the opportunity to address it before the decision is made.

67. Procedural fairness simply requires that the applicant has a fair opportunity to make representations to the decision maker. The instant case is not one where procedural fairness required the Defendant to seek representations from the Claimant and can be distinguished from *Balajigari* for three connected reasons. First, the Claimant was already on notice when making her application that the question of whether she was a genuine student was in issue due to the nature of the application process itself and the Claimant's particular circumstances. Secondly, the Claimant had no plausible further information to give. Thirdly, *Balajigari* involved a two stage inquiry whereas the present case involves only one stage; whether the Claimant was a genuine student was "in play" from the outset, rather than one which arose secondarily upon further review.

Relevant case law

68. The decisions of the Court of Appeal in *R v Secretary of State for the Home Department ex parte Fayed [*1998] 1 WLR 763 ("Fayed") and *in R(Balajigari) v Secretary of State for the Home Department* [2019] EWCA Civ 673; [2019] 1 WLR 4647 ("*Balajigari*") are central to this ground, so I will start by identifying the key points that I take from these two authorities.

69. *Fayed* concerned applications by the two Fayed brothers for naturalisation as British citizens under s.6(2) of the British Nationality Act 1981. Their applications were refused by the Home Secretary, who declined to give reasons for his decisions, pursuant to s.44(2) of the 1981 Act. The majority of the Court of Appeal (Lord Woolf MR and Phillips LJ), held that although the Home Secretary had been entitled not to give reasons when exercising this discretion, he was still obliged to act fairly and that in this context fairness required that, before reaching his decision, he should inform the applicant of the nature of any matters weighing against the application and give him an opportunity to address them. The decision was therefore unlawful by reason of the lack of a fair procedure.

70. The Defendant relies on the following passage from the judgment of Lord Woolf MR in *Fayed* at p.777:

> "I appreciate that there is also anxiety as to the administrative burden involved in giving notice of areas of concern. Administrative convenience cannot justify unfairness but I would emphasise that my remarks are limited to cases where an applicant would be in real difficulty in doing himself justice unless the area of concern is identified by notice. In many cases which are less complex than that of the Fayeds the issues may be obvious. If this is the position notice may

> well be superfluous because what the applicant needs to establish will be clear. If this is the position notice may well not be required. However, in the case of the Fayeds this is not the position because the extensive range of circumstances which could cause the Secretary of State concern mean that it is impractical for them to identify the target at which their representation should be aimed."

71. *Balajigari* concerned a challenge to the lawfulness of the Home Office's procedures when deciding applications from migrants, who had previously been given leave to enter or remain under the Points-Based System, for Indefinite Leave to Remain ("ILR"). As part of their applications the migrants had to demonstrate that they had met a minimum level of earnings in the previous year. The Home Office became concerned that applicants were submitting falsely inflated earnings and put in place a system to check the declared earnings provided by applicants against the figures held by HMRC. Where there were substantial discrepancies between the declared earnings and the HMRC figures and the Home Office was satisfied the applicant had been dishonest, the Home Office refused applications for ILR.

72. The Court of Appeal (Underhill, Hickinbottom, Singh LJJ) held that the requirements of procedural fairness required the Home Secretary, where he was minded to refuse ILR on the basis of dishonesty, or other reprehensible conduct, to (i) indicate to the applicant that he held that suspicion, (ii) give the applicant an opportunity to respond and (iii) take that response into account, before drawing the conclusion that there had been such conduct. The Court of Appeal also held that the duty to act fairly, however, did not require that in every case an interview be conducted and that a written procedure might well suffice in most cases.

73. In reaching this conclusion, the Court of Appeal applied *Fayed*, a decision which it found "instructive": at [49]. The Court observed at [50] that *Fayed* was decided in a context where the relevant individuals had no legal entitlement to a favourable decision, but had applied for a discretionary benefit to be conferred upon them (naturalisation as a British citizen). The Court then went on to make the following observation at [50]:

> "The fact that the legislation (section 6 of the British Nationality Act 1981) required a person to be of good character before the discretion to confer naturalisation could be exercised meant that, in one sense, everyone concerned knew that the question of character had to be addressed in the initial application. However, that did not prevent the Court of Appeal from holding that, where the Secretary of State has concerns about a person's character, those concerns may need to be put to the applicant before a concluded decision is taken to refuse the application."

Discussion

74. The procedural fairness question requires resolution of four main issues:

(1) First, does the principle of procedural fairness in *Balajigari* concern only findings of dishonesty or does it apply more broadly to adverse findings on integrity, bad faith and credibility?

(2) Secondly, if the duty applies to findings in the broader category, is it correct that the finding of a "reasonable concern" that the Claimant is not genuinely a student is an adverse credibility finding?
(3) Thirdly, did the duty of fairness in *Balajigari* require the Defendant to go back to the Claimant and give her an opportunity to address the concerns the Defendant had based on the Irish visa refusal, before making her decision?
(4) Fourthly, is the Defendant right that even if the Claimant had been offered the chance to make further representations there is no plausible further information she could have provided that would have made a difference to the outcome?

75. In relation to the first issue, I am satisfied that the Claimant is right that the duty of procedural fairness enunciated in *Balajigari* applies not only in relation to findings of dishonesty but also other adverse conclusions concerning character (as in *Fayed*) and credibility. This is expressed in a number of different ways in the authorities. Holman J in *R(Akturk) v SSHD* [2017] EWHC 297 (Admin), [2017] 4 WLR 62 at [40] speaks of *"adverse conclusions as to integrity, credibility or legitimacy",* while Saini J in *R(Karagul) v Secretary of State for the Home Department* [2019] EWHC 3208 (Admin) at [103] speaks of findings that a person *"acted in bad faith or disreputably in relation to the application"*.

76. On the second issue, I accept the Defendant's submission that there is no allegation of dishonesty here and the issue is whether there are "reasonable concerns" as to genuineness, which is different. However, in my judgement, the Decision is based on a conclusion which falls within the broader category of concerns about character and credibility. The Claimant had made a signed declaration as part of her application that her purpose was to study architecture at the University of York. The Defendant concluded that there were reasonable doubts about the Claimant's assertion that she was seeking entry to the UK for the purpose of study, such that there was reasonable doubt that she was concealing her true reason for entry. In these circumstances, the Defendant's conclusion unavoidably impugns the Claimant's credibility.

77. On the third issue, it is clear from *Balajigari* and the cases cited therein that what is procedurally fair in a given case is context-specific and depends on all of the circumstances. I accept the Defendant's submission that *Balajigari* involved a two-stage process, where stage one was concerned with whether the criteria for an ILR and the minimum earnings requirements were met and stage two concerned questions arising from any discrepancies revealed by the checks with HMRC. Here, by way of contrast, the Claimant was on notice from the outset that whether she was a genuine student would be assessed as part of the application process.

78. However, the principles enunciated in *Balajigari* are not confined to cases involving a two-stage process. In *Fayed* the issue of character was known by the applicants to be a central matter in issue from the outset because there was a statutory requirement to be of good character before the discretion to grant naturalisation could be exercised, as the Court of Appeal noted at [50]. But nonetheless procedural fairness required the Defendant to raise with the applicants the specific issues of character on the basis of which he proposed to refuse naturalisation. The same is true in respect of applicants for student visas, as the Defendant accepts that doubts as to genuineness in that context require the Defendant to give the applicant an interview.

79. The same is true for the Claimant, who was aware that as part of her application she needed to set out any past visa refusals and that in this way they were broadly relevant to her application. The Claimant also knew that she had been required to sign a declaration that she intended to come to the UK for study. For these reasons, I accept that she knew in broad terms that whether she was a genuine student was in issue. What she did not know was that the Defendant was going to ignore the evidence pointing to her being a genuine student, treat the Irish visa refusal as the decisive factor counting against her and make no further enquiries about it notwithstanding that the Claimant had flagged the likely illegality of that refusal in her application.

80. For completeness, I accept the Claimant's submission that the Defendant refusing an OTA on genuineness grounds determines the Claimant's visa application, because in practice without an OTA the Claimant cannot reach a Visa Application Centre to complete it and enrol biometrics. The Defendant's own *Student and Child* policy states that applicants who are to be refused on grounds of genuineness are to be interviewed. Given that the OTA is the Claimant's only real opportunity to succeed in her visa application, the Defendant's ordinary standard of fairness should apply and she should at the very least have been afforded the chance to make further representations.

81. Mr Holborn's submission that further representations could not have made a difference to the Decision ignores the Claimant's evidence in this claim, which strongly supports her contention that she is a genuine student. She had gained excellent academic qualifications in Gaza as a result of her hard work and determination in the most challenging of circumstances. She had already completed one year of Architectural Engineering at the Islamic University of Gaza, which is surely the best evidence of her genuine motivation to study architecture. Her evidence addresses a matter that the Defendant submitted was suspicious, explaining why she first applied to UK universities for architecture, then applied to Cork and then applied to York, as she searched for a fully funded place and a student visa. The Claimant's evidence also explains that she was refused an Irish visa on exactly the same basis (lack of financial documentation) as the lead claimant in the Irish judicial reviews (Ms Abudalu), who is the only other person to have applied to both the UK and to Ireland and whose Irish visa refusal was held to be unlawful. While the decision in Ms Abudalu's case came after the Decision, her legal challenge was well underway before the Decision and had the Claimant been given the opportunity to do so, she could have demonstrated the common legal error in these refusals and explained why these decisions were likely to be found to be unlawful.

82. I am therefore satisfied that the process adopted by the Defendant was procedurally unfair and that a fair process could have made a material difference to the outcome in this case.

Outcome

83. For these reasons, I grant the Claimant permission on Grounds 1, 2, 3 and 4 and her claim for judicial review succeeds on all four grounds. I will therefore quash the Decision and direct the Defendant to reconsider the Claimant's application for an OTA. I will hear from the parties on the timescale for reconsideration.