Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/05669/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Sent**
On 20 December 2013	**On 27 January 2014**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

F S A
(ANONYMITY ORDER MAINTAINED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Walsh, instructed by Luqamani Thompson, Solicitors
For the Respondent: Mr Tufan, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, FSA, is now aged 16 years. The appellant claims to have left Syria when he was 7 years old and travelled to Egypt where he remained living until he was 14 years old. He claims to have left Egypt in 2012 and travelled to the United

Kingdom via France and Italy. He entered the United Kingdom on 28 November 2012. The appellant was granted leave to remain in the United Kingdom outside the Immigration Rules until 1 July 2015. The appellant appeals against the rejection of his asylum claim under Section 83 of the Nationality, Immigration and Asylum Act 2002. His appeal was dismissed by the First-tier Tribunal (Judge Ross) in a determination dated 31 August 2013. The appellant now appeals, with permission to the Upper Tribunal.

2. The grounds of appeal were drafted by Mr John Walsh of Counsel who also appeared for the appellant at the Upper Tribunal initial hearing. The grounds of appeal are helpfully summarised by Mr Walsh as follows:

   (i) Failure to have any proper regard for the fact that the appellant was only 15 years of age at the date of the hearing and was relating events that took place several years ago.

   (ii) The country expert concluded that a core part of the appellant's claims (his and his mother's experience at the hands of the parental uncle after the death of their father) was perfectly plausible.

   (iii) The respondent and the FTT assessed the appellant's credibility against the premise that the appellant was claiming to be Syrian – which he did not advance as part of his case.

   (iv) The country expert opined that the appellant would, contrary to the finding of the judge, not be documented by the Egyptian authorities.

3. At [2] Judge Ross summarised the appellant's account as set out in the respondent's refusal letter:

> "The reasons for refusal letter identify the appellant's claim, as in summary that he claims to be a Syrian national. His claim is that his father died when he was 7 years old after which his mother took him to live in Egypt. He is unsure whether his mother is Syrian or Egyptian. He has no brothers or sisters. In Egypt he lived in a rented house in Menufia. His mother died when he was 12 years old and he went to live with his friend's family. He worked as a carpenter for three years. He left Egypt either because of the troubles which have occurred there or because his mother had died and he has no family. The appellant claims to fear the revolution in Egypt, although he does not fear anyone specifically in Egypt or in Syria."

4. The respondent did not accept that the appellant was Syrian and considered it likely that he was Egyptian. The respondent considered the appellant could safely return to Egypt.

5. Dealing with ground (i) I find that this ground does not have merit. First, it was abundantly clear to the First-tier Tribunal Judge that the appellant was a minor; at [5] the judge noted that the appellant had been granted discretionary leave on account of his minority and that he had before him only an "upgrade" appeal under Section 83 of the 2002 Act. Crucially, at [11], Judge Ross wrote, "I found that the appellant was a lucid intelligent child who was able to understand the proceedings and all the questions put to him." That sentence amounts, in my opinion, to an adequate self-direction by the judge to take account of the appellant's youth in assessing the credibility of his evidence. Notwithstanding the fact that the appellant was only 15

years old at the time of the First-tier Tribunal hearing, it was open to Judge Ross to observe that the appellant was "lucid and intelligent" and to find that the evidence of the appellant was evasive and, at times, untrue. It is, of course, vitally important to have regard to the nature and characteristics of a witness (including his or her youth) when assessing credibility but that does not mean that a decision-maker cannot find such a witness has consciously sought to hide the truth from the Tribunal. It is self-evident that an individual cannot be expected to remember events which occurred when he or she was very young indeed but I do not consider it unreasonable for the judge to have expected the appellant to have given a consistent and truthful account of events which may have occurred since he was about 7 years old. I find in particular that it was open to the judge to find that "it is likely that [the appellant] has family in Egypt and is concealing that fact." It was also open to the judge to find that Mahmood, with whom the appellant lived for two years, was likely to have been a family member. It should also be borne in mind that the judge was assessing the evidence in the context of the appellant's categorical statement that he was "not Egyptian, but I don't know what nationality I am." (Determination, 10). The judge relied on the *Sprakab* Report (although, quite properly, he did not regard it as determinative) together with other evidence including that the appellant was Egyptian. The judge did not err in law in reaching that finding and I consider his reasoning to be entirely sound.

6. Ground (ii) is also without merit. The assessment of the credibility of an appellant's account is a matter for the judge although he may be assisted in that task by the opinions of an expert witness. The fact that the expert found that the appellant's account was "perfectly plausible" does mean that the judge had to accept it as true.

7. Ground (iii) also fails to disclose an error of law in the judge's determination. The appellant's claim was that (i) he was not Egyptian but did not know his nationality and (ii) would be at risk on return to Egypt. I have quoted above the statement of the appellant ("noted *verbatim*" by the judge at [10]) which makes it entirely clear that the judge was aware that the appellant did not assert that he was a Syrian national. However, in the light of the appellant's account, it would appear that the appellant might only be a national of either Syria or Egypt and it was entirely reasonable for Judge Ross to approach the appeal on that basis. Ultimately, the judge concluded that the appellant had not been telling him the truth and that he had failed to discharge the burden of proving that he would be at risk in Egypt, in a country from which the judge found the appellant originated.

8. Ground (iv) records that the country expert believed that the appellant would have left Egypt without any documents providing evidence of his life there. At [12], the judge found that it was "incredible that the appellant has no Egyptian ID documents having lived there since the age of 7 and having been to school and worked in Egypt." I consider it arguable that the appellant's casual work as a carpenter may not have generated any paper trail. It may be more reasonable to expect the appellant's school career to have been documented in some way. However, the judge's puzzlement at the absence of any documents from Egypt must be considered in the context of his finding that the appellant could have obtained such documents

from his friend (or family member) Mahmood with whom he had remained in telephone contact. There is no suggestion that the judge has criticised the appellant for failing to bring the documents with him to the United Kingdom. Background material indicates that Egypt is a sophisticated bureaucratic state and I consider it reasonable for the judge to expect that an individual who had spent seven years living there would have access to some documents relating to his residence. I find that it was open to the judge to conclude that, by not producing any documentation from Egypt, the appellant was seeking to conceal the truth about his nationality. Even if I am wrong in that conclusion, I find that the judge has given other entirely adequate reasons for concluding that the appellant had failed to discharge the burden of proving that he would be unable to return to Egypt or would be at risk there.

9. Finally, the judge was well aware that proper reception arrangements would have to be made for the appellant to be received upon return to Egypt. At [20], he wrote, "[the appellant] position as an unaccompanied minor has been taken into account by virtue of this grant of leave. Formal enquiries ought now to be made as to the provision of ID and travel documents." That observation followed the earlier finding by the judge that the appellant is likely to have family members living in Egypt to whose custody he might return.

10. In the circumstances, this appeal is dismissed.

DECISION

This appeal is dismissed

Signed Date 16 January 2014

Upper Tribunal Judge Clive Lane