



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: AA/01237/2015

**THE IMMIGRATION ACTS**

**Heard at Columbus House, Decision & Reasons Promulgated  
Newport  
On 26 November 2015**

**On 5 January 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE L J MURRAY**

**Between**

**S H  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Neale, Counsel

For the Respondent: Mr Richards, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Egypt. He arrived in the UK on 26 June 2014 and claimed asylum. The Respondent refused his application for asylum in a letter dated 5 December 2014 and made a decision to remove him as an illegal entrant under section 10 of the Immigration and Asylum Act 1999. The Appellant appealed against that decision and his appeal was dismissed by First-tier Tribunal Judge Coaster on 19 June 2015. The Appellant sought permission to appeal to the Upper Tribunal which was granted on 18 August 2015 by First-tier

Tribunal Judge Cruthers. He considered that it was arguable that the First-tier Tribunal had erred in law when finding that the Egyptian authorities would have no record of the Appellant having been present during the massacre in Rabaa Square on 14 August 2013 and that there was a possible failure to make further reference to the country evidence relating to Muslim Brotherhood members in Egypt.

## **The Grounds**

2. Ground 1 asserts that the First-tier Tribunal accepted that the Appellant was in Rabaa Alawadiya Square during the massacre on 14 August 2014 and that he was injured in a gas canister explosion but found erroneously, that the authorities would not know that he was at the demonstration. It is said that the Appellant could not be expected to know how the authorities collected information on opponents. Evidence was submitted to show that the Appellant had spent a week in hospital being treated for serious burns and the documents from the hospital were submitted at the hearing which stated that he claimed to have been injured at Rabaa square. There was therefore documentary evidence within the health system linking the Appellant to Rabaa Square. This was referred to by the Judge who had provided no reasons for ignoring this evidence when concluding that the authorities had no record of the Appellant's attendance at Rabaa Square.
3. Ground 2 asserts that the Judge found that the Appellant had no profile and was not being sought by the Egyptian authorities but made no reference to the Home Office Country Information and Guidance on Egypt and the Muslim Brotherhood. This information stated that being politically active, particularly in demonstrations, may put someone at risk of persecution. It is also said that the First-tier Tribunal failed to have regard to aspects of the country guidance before her, namely that the authorities had detained "thousands of rank-and-file members and other perceived sympathisers". According to the background evidence, someone who was a perceived supporter of the Muslim Brotherhood would face imprisonment and members who vocalised their opinions in a classroom or on Facebook were also at risk.
4. It is said that the First-tier Tribunal failed to engage with this evidence and appears to have assumed that the Appellant had no profile without considering the background evidence as to the profile of those who had been arrested. This ran contrary to the background evidence and she was obliged to give reasons for rejecting.
5. Ground 3 asserts that in finding that the Appellant came to the UK to follow his girlfriend she did not consider the girlfriend's statement that the Appellant came to the UK on her request because of the injuries he had sustained and the risk of arrest. An application to submit her evidence by telephone was refused by the Tribunal and

the Appellant was therefore unable to provide witness evidence on his reasons for coming to the UK. The grounds assert that it was unfair to make findings on a disputed point without given the Appellant an opportunity to present evidence or without considering the evidence that was before Judge in the form of a written statement.

### **The R24 Response**

6. The Respondent argues that the First-tier Tribunal provided cogent reasons why it was not accepted that the Appellant had any connections with the Muslim Brotherhood including the fact that he had lived in Egypt for five years. The Judge had given sound reasons for rejecting his claim to of interest to the authorities.

### **The Hearing**

7. Mr Neale submitted that Grounds 1 and 2 raised common issues. Essentially the Judge accepted that the Appellant was in the Square and injured in an explosion as claimed and went on to find that he was not at risk because she did not think that the authorities were looking for. At paragraph 45 it was accepted that he was in sympathiser activity. It was not clear whether she accepted that the police visited his home. In his submission having found that he was at the square she had overlooked a number of aspects of the evidence. Ground 1 related to the medical record which she accepted as genuine. A written record existed and this needed to be assessed in terms of the background evidence. The authorities were interfering with hospitals and hospital evidence. She had not considered the background evidence. She accepted at paragraph 45 that he was injured in gas canister explosion. At p CA62 the background evidence showed that two people were killed in an explosion. It was also worth noting that according to the same background evidence a large number of people were detained overnight (CA 73). Her conclusions in relation to the fact that they would not know how he existed did not take into account evidence regarding the hospital. She did not make any credibility findings on questions 66 to 67 of asylum interview. She found that he was a sympathiser but had not considered the background evidence. There had been an all-encompassing crackdown. She did not seem to have considered the fact that this could have put him under suspicion. She was not obliged to accept it but was obliged to consider it. At was clear from evidence at C3 that it was not just political or electoral activity but also humanitarian activity. The authorities were taking people with headscarves and beards as extremists and targeting them. She should have made findings. She seemed to have accepted that he expressed support on Facebook in Greece. There was background evidence regarding social media at C2. The authorities could monitor social media posts. She had not taken it into account. She was obliged to make findings on it.

8. The Judge did express scepticism about the police not visiting. It was not clear from paragraphs 33 to 44 whether she found that his evidence was truthful. If she did not accept that, it was in part contingent on her conclusions and core to her overall findings on credibility and risk. One could not be sure that she would not have reached a different overall conclusion. There was a failure to take account of three material aspect of the evidence. The three aspects were social media, humanitarian actors and that the Muslim brotherhood suffered a severe crackdown. Given her acceptance that he was at the square her conclusions on risk were not sufficient. I could not be satisfied that she should not have allowed the appeal.
9. With regard to Ground 3, the Appellant's partner was unable to attend the hearing due to her father's conservative attitude. Her evidence was clearly relevant and Judge Coaster had used Appellant's relationship for s8 findings. It would have been relevant and it could not be said that the findings would have been the same had she attended the hearing. The authority of **AM (Cameroon) [2008] EWCA Civ 100** of CA showed that there was a discretion to receive evidence by telephone where the evidence is relevant to credibility. In **Nare (evidence by electronic means) Zimbabwe [2011] UKUT 443 (IAC)** what was suggested was that arrangements should be made for the person to be identified. In so far as the refusal was concerned it said that it was not appropriate for the evidence to be given by phone but **AM** made clear that that it should be given consideration. This witness was of substantial relevance. What should have happened here was that the court should have been able to make arrangements to give evidence through a solicitor's office. As it was the application was refused. That was not an adequate disposal having regard to the importance of this evidence. It may well be that Mr Neale should have made an application for the matter to be adjourned. If he made a miscalculation due to the importance of this matter the Appellant should not be blamed. He had been prejudiced because witness should have been able to give evidence and had the Judge should have been able to hear evidence the matters on which she made adverse credibility findings. There had been procedural unfairness here. The two sentence refusal did not involve full consideration. He conceded that it was difficult if not impossible to grant the application without an arrangement. Whoever made the mistake the Appellant was deprived of the opportunity to put forward relevant evidence.
10. Mr Neale submitted that should I find an error of law the findings to be preserved should be the Appellant's attendance at Rabwah square and involvement with social media whilst in Greece. Otherwise there should be a de novo hearing.
11. Mr Richards submitted that there had been no material error of law. The Judge said that she had considered all of the evidence but did not refer to each and every piece of the evidence. Having weighed the

whole of the evidence she came to a conclusion properly open to her for which she had given adequate reasons although she did accept that the Appellant was present at the square at the relevant time she did not accept that the authorities in Egypt had any interest in him and gave perfectly adequate and proper reasons for coming to that finding. Her conclusion was of course that the Appellant had constructed this claim. He was effectively an economic migrant who had previously gone to Greece and stayed there for a number of years and having been unable to remain in Greece his claim was constructed to have a better life here and to follow his girlfriend. She set this out in paragraphs 44 and 45 and gave reasons for her conclusions for finding that there was no interest in him. He was in hospital for a week. There was every opportunity for the authorities to apprehend him and they made no attempt to do so. With regard to the police there was a discrepancy in his evidence as to the number of visits they made. She made an adverse finding here. The grounds as to the Appellant's claimed risk not being fully assessed had no merit and the Judge did everything she was required to do. It was clear to the Appellant why his claim was rejected. In terms of the last ground and the potential telephone witness, that decision formed no part of this determination. It was open to the Appellant to seek judicial review of the decision by Mr Poole not to admit that evidence and the Appellant and those who represented him could have renewed the application before the First-tier Judge. That was not done. All that she was asked to do was to come to a conclusion on the evidence before her. She dealt with the evidence of the girlfriend and gave sound reasons. In the alternative, the decision to refuse permission to admit evidence on the telephone was in accordance with **Nare** which took into account the earlier case. No party had a right to call evidence by electronic link. Paragraph 20 showed that the evidence should be given from formal surroundings and a video link if available. There was no reason to think that Resident Judge Poole would have taken the judicial decision lightly and when he said that there was no good reason why the witness could not attend that was a perfectly proper conclusion and no material error of law flowed from that decision taken properly within his discretion. In conclusion no material error of law identified.

12. Mr Neale replied that in relation to his first point, although the Judge had said she had considered the evidence, the items of evidence were significant material aspects of the evidence. She had failed to take them into account or give reasons for rejecting them. In his submission the reasons given could well have been affected by the evidence raised. In relation to Ground 3, it was made clear to the First-tier Tribunal that the girlfriend could give evidence. The Judge said that the application had been refused. The Appellant should not be penalised. There was significant procedural unfairness. The two sentence refusal did not adequately deal with the importance of the

evidence. He was not criticising Judge Poole but there was procedural unfairness to the Appellant.

13. Mr Richards submitted that if I were to find an error of law no findings should be preserved.

### **Discussion and Findings**

14. In coming to my conclusions in this appeal I have had regard to all the evidence that was before the First-tier Tribunal as well as the grounds for permission to appeal, the skeleton argument submitted by Mr Neale and the submissions of both representatives.

#### **Ground 1**

15. The First-tier Tribunal found at paragraph 45 of the decision that the Appellant was in Rabaa Al Adawiya Square on 14 August 2014 and that he was injured by a gas canister exploding. She found however, applying the correct standard of proof, that he was not being sought by the Egyptian authorities as a result. The Appellant asserts that she failed to give any or any adequate reasons for finding there was no record of the Appellant at the massacre. In Mr Neale's skeleton argument he sets out the background evidence which he asserts the First-tier Tribunal should have and failed to take into account.
16. It is clear that the First-tier Tribunal accepted the medical evidence submitted by the Appellant as genuine. That evidence was at A11-22 of the Appellant's bundle. According to the hospital correspondence the Appellant was admitted to hospital on 16 August and discharged on 23 August 2013 and attended the outpatient's clinic for a further 3 weeks. The First-tier Tribunal gave a number of reasons for finding that the Appellant was not at risk from the authorities notwithstanding his involvement in the demonstration and his treatment in hospital. The Judge found, at paragraph 42, that the Appellant had not explained how the authorities would know that the Appellant was at the demonstration. She noted in the same paragraph that he was removed from the makeshift hospital quickly and transferred to another and the following day he was taken by his brother to the hospital in Al Buhayrah and that no police attended the hospital looking for him. She rejected his account that his friends had informed him on returning from hospital that the police had called at his house. In paragraph 44 of her decision she sets out there was no visit to the Appellant by the police before he left Egypt in September 2013. There was no witness statement from any member of his family about the police entering the Appellant's home before his discharge from hospital. There was no arrest warrant, no official letter or summons. She concludes that the Appellant's fear was based entirely on a report by unidentified friends who they had seen the police visit his home. She further notes that the Appellant did not report what his father or brother said about the visit. Further, the Appellant's village

was small and he stayed in the village at his sister and other relative's homes without the police searching for him or visiting his home. She further finds at paragraph 46 that there was a significant discrepancy in the Appellant's evidence as to the number of times the police allegedly visited his home. Whilst in his interview he stated it was from time to time, in cross-examination he asserted that it was only once.

17. I have considered the background evidence cited by Mr Neale in his skeleton argument which is said should have been taken into account by the First-tier Tribunal. That evidence is contained in a Human Rights Watch Report of August 2014. The report sets out how, on 14 August 2013, Special Forces entered Rab'a hospital and ordered everyone out of the hospital (CA69). Reference is also made to a report of one man being burnt to death in his tent (CA62) and to the fact that several hospitals rejected dead or injured protesters coming from the square. Reference is also made to large numbers of people being detained overnight (CA73).
18. The First-tier Tribunal Judge set out the evidence that she took into account at paragraph 8 of her decision and the report cited above was included there. She refers to the protest at the square at paragraph 41 of the decision, stating that a total of 600 protesters and 8 police officers were killed in the violence and thousands arrested over the course of the following weeks. She was clearly therefore cognisant of the background to the protests and consequences for those involved. Whilst she made no specific reference to the passages of the background evidence cited by Mr Neale, I do not consider that this lead to a material error of law in terms of her assessment of risk to the Appellant. That evidence does not show that a demonstrator treated at Rab'a hospital would be at risk from the authorities. The evidence cited does not show and, no other evidence was referred to me to show, that the authorities checked the hospital records and used this evidence to pursue demonstrators. I do not accept that this is a risk that should be inferred from the fact that the police raided the hospital on the day of the demonstration. It does not follow therefore from the Judge's finding that the Appellant was treated at Rab'a hospital that he would be at risk. It was therefore open to the First-tier Tribunal to conclude that the Appellant had not explained how the authorities would know he was at the demonstration.

## **Ground 2**

19. The Appellant also argues that the First-tier Tribunal failed to consider relevant background evidence in relation to the Appellant's support of the Muslim Brotherhood. The First-tier Tribunal set out the Appellant's claim in relation to the Muslim Brotherhood at paragraph 16, noting that he was a sympathiser of their charity policies and not a registered member or a documented or recorded supporter. She

records that in Egypt he had assisted a local group in distributing food to the needy. She states at paragraph 41 that the Egyptian authorities continue to crackdown on Muslim Brotherhood members and supporters. She was clearly aware of the factual basis of his case.

20. I find that the First-tier Tribunal gave clear and sustainable reasons for concluding that the Appellant would not be perceived to be “have any profile” with the Egyptian authorities. It is clear that she took account of his claim to have assisted a local group but found that there was no evidence to show that the authorities considered him to be involved. She rejected his claim that the authorities would know that he was involved in the demonstration at Rabaa Al Adawiya Square and I have found that her findings in this regard were sound. She gave clear and sustainable reasons for finding that he had not shown that the authorities were interested in him and made sustainable adverse credibility findings based on the evidence before her. It was open to her to find that there had been a contradiction in the Appellant’s evidence with regard to the police visits to his home, that the police had not demonstrated an interest in him either whilst he was in hospital or as an outpatient and that there was no official documentation to show that the authorities were involved.
21. It is argued that the Appellant’s former Facebook activity whilst living in Greece should have been considered as a risk factor. However, on the Appellant’s own case he had not used Facebook to post about the Muslim Brotherhood since the incident in the square and his Facebook account was closed (A5). The First-tier Tribunal considered the evidence in relation to Facebook at paragraph 45 of her decision. She gave clear and adequate reasons for rejecting his claim to have a profile in relation to the Muslim Brotherhood. Her findings that he had no on-line presence since arriving in Egypt in 2013 or since leaving Egypt, that the authorities were not aware that he was involved in the demonstration on the square; that he had no contact with the local group and that there was no evidence that the local group and been questioned or arrested by the police were sufficient to lead to a conclusion that he would not be perceived as a Muslim Brotherhood supporter.
22. In view of her findings that the Appellant had no profile as a Muslim Brotherhood supporter she was not obliged to set out the passages from background evidence relied on by the Appellant in the grounds of appeal and skeleton argument. In view of the fact that she found that he would not be perceived to be a supporter she did not need to engage with the evidence relating to risk to perceived supporters.

### **Ground 3**

23. Ground 3 asserts that in finding that the Appellant came to the UK to follow his girlfriend the First-tier Tribunal did not consider the statement submitted by the girlfriend that the Appellant came to the



UK at her request because of the injuries he had sustained and the risk of arrest. It is argued that due to refusal of an application to submit the girlfriend's evidence by telephone the Appellant was unable to provide witness evidence on his reasons for coming to the UK.

24. The Appellant applied for a direction on 17 June 2015 for a witness to give evidence by telephone. That witness was the Appellant's girlfriend. The reason it was said that she could not attend the hearing was set out in her statement and was due to the fact her father did not know about the relationship with the Appellant and she did not want to talk to him about it for fear of jeopardising it. She asserts that she could not find an explanation for the absence caused by her return journey from Middlesbrough to Newport.
25. The First-tier Tribunal refused that application on 18 June 2015 in the following terms: "It is not appropriate to have witnesses giving evidence by phone. In any event, I see no good reason why the witness cannot attend".
26. The Appellant did not make an application for an adjournment at the substantive hearing. At paragraph 9 of the decision the First-tier Tribunal Judge notes the refusal of the request made on 17 June 2015 and states that she confirmed that she would attribute such weight as she deemed appropriate to the statement. She then considered the statement at paragraph 37 and stated that according to the Appellant's testimony, she had encouraged the Appellant to come to the UK illegally and had deceived her father about the Appellant's presence in the United Kingdom. She concluded that the Appellant had written the statement deceitfully and she attributed little weight to it.
27. The First-tier Tribunal Judge cannot be criticised for not adjourning the appeal because there was no such application before her. It was open to the Appellant to seek judicial review of Resident Judge Poole's refusal to issue a direction but this was not done. I have considered the case law submitted by the Appellant. Mr Neal relies in his skeleton argument on the cases of **AM (Cameroon) [2008] EWCA Civ 100** and **Nare (evidence by electronic means) Zimbabwe [2011] UKUT 443 (IAC)** and submits that the First-tier Tribunal's discretion is wide enough to allow evidence to be given by phone, and the Tribunal could have directed that arrangements be made for her to evidence from a court or Tribunal centre closer to her home. It is said that the refusal of the request did not properly apply the guidance and the Tribunal could have requested more information about the arrangements.
28. It is clear that the application for a direction on 17 June 2015 did not follow the guidance in **Nare**. No indication was given of what arrangements had been made provisionally at distant site or whether

any investigations had been made to use a court or a Tribunal hearing centre. There is no evidence to show that the application was served on the Respondent. It was not, as the skeleton argument appears to assert, incumbent on the Resident Judge who refused the application to make such inquiries. The responsibility was clearly the Appellant's and it was not carried out. In the circumstances Judge Poole's refusal was a reasonable judicial response. He was entitled to conclude, given the reason for application was for the witness to practice a continued deceit as to the relationship with the Appellant on father, that there was no "good reason" why she could not attend. In the circumstances I consider that there was no procedural unfairness.

29. Further, I find that it was open to the First-tier Tribunal to attach little weight to the girlfriend's evidence. It is said at paragraph 15 of the grounds that had the girlfriend been able to give evidence the First-tier Tribunal may have reached different credibility findings. The girlfriend, in a short statement, sets out that she knew the Appellant was going to Raba'a Square to demonstrate and that she discovered from his brother the next day that he was in hospital. She spoke to him by telephone and he used to stay in different places. She told him that he needed to come to the UK. The First-tier Tribunal accepted that the Appellant was at Rabaa Square and in hospital. The First-tier Tribunal's adverse credibility findings with regard to the risk to the Appellant were made without reference to the girlfriend's evidence. At paragraph 47 the Judge found that he was not at risk and then considered that his motivation in coming to the UK was due to having a girlfriend here. In the circumstances I also find that the absence of oral evidence from the girlfriend cannot be said to have led to any substantive unfairness. I find no error of law in the First-tier Tribunal's decision.
30. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. I do not set aside the decision and the appeal is dismissed.

### **Anonymity**

The First-tier Tribunal made an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed

Date

Deputy Upper Tribunal Judge L J Murray