



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

Appeal Number: PA/03811/2016

THE IMMIGRATION ACTS

**Heard at Glasgow
on 1 August 2017**

**Determination issued
on 3 August 2017**

Before

Mr C M G OCKELTON, VICE PRESIDENT & UT JUDGE MACLEMAN

Between

[A K]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

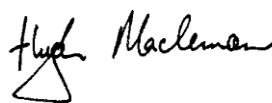
For the Appellant: Mrs F Farrell, of Peter G Farrell, Solicitor

For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. In her decision promulgated on 22 August 2016, dismissing the appellant's appeal, First-tier Tribunal Judge Kempton found in effect at ¶33 – 34 that the appellant meets the definition in article 1A (2) of the Refugee Convention, and is a refugee from Syria.
2. The respondent does not propose to remove the appellant to Syria, but to Egypt. He had been living there legally. His wife and daughter remain in that country. The refusal letter says at ¶52 that the appellant has residence rights and could arrange to return there.
3. The Judge rejected the appellant's claim to be at risk in Egypt. His grounds of appeal to the UT do not challenge those findings (rightly so, as no arguable legal error is discernible in them).

4. The Judge thought at ¶42 that although the Egyptian authorities had no interest in the appellant, there might be difficulty in returning him in the absence of a passport and other documentation. It appears that the appellant arrived in the UK on a valid Syrian passport, which has since expired.
5. The grounds of appeal to the UT argue that in the absence of “safe third country” certification under ¶345 of the immigration rules the respondent’s decision was “unlawful”, and the appeal should have been allowed because in terms of ¶334(v) the appellant would be required to go to a country where he faced persecution (Syria).
6. That is misconceived. The provisions of ¶345 relate to return of an asylum applicant to another country for substantive examination of the application there. This appellant’s application has been examined in the UK. The respondent’s proposal is that he should return, or be removed, to a country where he does not face persecution (Egypt).
7. The jurisdiction of tribunals under s. 84(1) (a) (b) and (c) and s. 86 (2) of the 2002 Act is to decide whether removal “would breach” the UK’s obligations in respect of the Refugee Convention, humanitarian protection or the Human Rights Convention. That plainly requires a decision on the hypothesis of removal taking place.
8. Whether removal to Egypt is practical or likely is irrelevant for appeal purposes. In absence of a finding that removal of the appellant to the country proposed would breach the UK’s obligations, the Judge could do nothing other than dismiss the appeal.
9. That might be thought to have potentially unfortunate results, leaving the appellant in limbo, but such issues are for resolution between the appellant and the respondent, and if necessary in other proceedings, not by statutory appeal under the 2002 Act.
10. In this case, we think it might be useful to observe that pending removal the appellant, having the status of a refugee from Syria, is entitled to be treated as such – for example, in relation to taking employment and access to welfare, under Chapters III & IV of the Refugee Convention.
11. The decision of the First-tier Tribunal shall stand.
12. No anonymity direction has been requested or made.



UT Judge Macleman

1 August 2017