



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

Appeal Number: PA/05109/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 15 December 2017**

**Decision & Reasons
Promulgated
On 17 January 2018**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**MR MAGED GAMAL ABDELHAMID GABALLA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr L Tarlow, Home Office Presenting Officer

For the Respondent: Mr A Seelhoff, Solicitor

DECISION AND REASONS

1. In this case the appellant (hereafter the Secretary of State or SSHD) brings a challenge with permission against the decision of Judge Nicholls of the First-tier Tribunal (FtT) allowing the appeal of the respondent (hereafter the claimant) against the decision made by the SSHD on 17 May 2017 refusing to grant asylum.
2. The basis of the claimant's asylum claim was that he had become involved in Egypt with the Freedom and Justice Party, a political wing of the Muslim Brotherhood. He had been detained and ill-treated by the military in

August 2013. After he had been released in October 2013, he continued to help the Muslim Brotherhood. On 9 May 2015 he was again arrested and ill-treated before being released on conditions on 25 May. He then applied for a business visa to the UK and left Egypt on 27 July 2015. He claimed that an arrest warrant had been issued against him after he left.

3. In the Reasons for Refusal Letter (RFRL) the SSHD stated that it was not accepted that the claimant had given a credible account of being a member of the Liberty and Justice Party or of the Muslim Brotherhood or of having been detained and ill-treated by the authorities.
4. The judge, having heard the claimant give oral evidence, found that he was credible.
5. The SSHD's grounds assail the judge's decision in two main respects. First it is submitted that the judge failed to properly apply s.8 of the 2004 Act and in reality only paid lip service to it. Secondly it was argued that the judge had simply not engaged with materially applicable adverse points in the RFRL.
6. I heard brief submissions from Mr Tarlow and Mr Seelhoff.
7. As regards the first ground, I find it lacks merit. The judge clearly did treat the claimant's delay in claiming asylum as materially damaging. At paragraph 14 the judge stated:

"14. The central question in this appeal is whether the Appellant's account is credible. In that respect, I must take into consideration the provisions of section 8 Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and I note that the Appellant had been in the UK for more than a year before the UK authorities became aware of his wish to claim asylum and that he only made the authorities aware once he had been arrested by police in connection with a potential criminal matter. The Appellant claims that he was receiving advice from the FJP in Egypt that he should not make a claim for asylum, saying in his original statement that there was some suggestion that he might be asked to go to Turkey. That is, fundamentally, an implausible reason for delaying his notification to the UK authorities when he claimed that the only reason he came to the UK was for his own safety. Because of the statutory provision requiring that his credibility be considered damaged, taking into account the lengthy delay, the clear implication that he would not have claimed by then were it not for the arrest by the police and the inherent unlikelihood that he would have been advised by the FJP in Egypt to delay his claim, I find that the damage to the Appellant's credibility is substantial."
8. At paragraph 18 the judge reiterated that "[h]is delay in making his claim for asylum is as I have noted, substantial and deliberate, even though he claims to have been acting in accordance with "advice" given to him by the FJP from Egypt".
9. It was for the judge to assess how damaging this late claim was.
10. However, I consider the second ground is made out. This was a case in which the SSHD in her refusal decision had identified numerous shortcomings in the claimant's account. Several of these, as Mr Seelhoff

acknowledged, are not addressed at all in the judge's decision. So far as concerns the issue of consistency, the judge appears in paragraph 13 to consider that this could be limited to the question of whether the claimant's testimony at the hearing was consistent with the statements he had submitted and with his asylum interview. But from the refusal decision it is clear that the SSHD was alleging identified inconsistencies to the claimant's interview account. Several are not addressed at all by the judge. Whilst at paragraph 15 the judge addresses one of the alleged inconsistencies ("between the [claimant's] explanation of the policies of the FJP and the published statement included in a BBC News Bulletin" (, he appears to have considered this was not significant because the claimant at interview had identified that the FJP aspired to freedom, justice and democracy. Why the judge did not consider it significant that the claimant nevertheless failed to identify this party's call for an Islamic economic system and the implementation of Sharia law as two FJP essential principles, is not explained at all. Nor does the judge engage with the claimant's failure to give details of the FYP consistent with the COI regarding when it was founded, by whom, etc.

11. Also deficient was the judge's treatment of the documentary evidence. Given the judge's decision to allow the appeal it must be assumed he was satisfied that the documents produced by the claimant carried significant weight; yet the thrust of paragraphs 15-17 was to identify significant problems with the documents. Why such problems were thought not to weigh against the claimant is not explained.
12. I consider that the judge's failure to properly engage with the terms of the SSHD refusal decision, together with his unduly narrow approach to the issue of consistency and equivocal handling of the issue of the reliability of the documentary evidence, renders his decision legally erroneous. I therefore set aside his decision.
13. I concur with both representatives that if I decided to set aside the decision of the FtT Judge (as I have), the case should be remitted to the FtT for a fresh hearing (not before Judge Nicholls), as no findings of fact made by the judge can be preserved.

14. To conclude:

The decision of the FtT Judge is set aside for material error of law.

The case is remitted to the FtT (not before Judge Nicholls).

No anonymity direction is made.

Signed:

Date: 15 January 2018



Dr H H Storey

Judge of the Upper Tribunal