



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/01180/2018

**THE IMMIGRATION ACTS**

Heard at Manchester Civil Justice Centre  
On 11 January 2019

Decision & Reasons Promulgated  
On 28 January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

HAAM  
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Madubiike, of Broudie Jackson and Canter Solicitors

For the Respondent: Mr Tan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

- 1 This is the appeal against the decision of Judge of the First-tier Tribunal Monaghan dated 13 September 2018 dismissing the appellant's appeal against the decision of the respondent dated 11 January 2018 refusing his protection claim.
- 2 The appellant is a national of Egypt, who arrived in United Kingdom on or around 23 September 2015 and claimed asylum. He sought protection on the grounds that

he feared his extended family members in Egypt because of a dispute as to the possession of a certain piece of land. It was said that as part of this dispute a member of his cousin's family had been killed, which led to criminal proceedings being taken against the appellant, two of his brothers, and his mother and father. It was said that these other family members had been acquitted at first trial or on re-hearing/appeal, but that the appellant had been sentenced in his absence to 25 years imprisonment for murder. The appellant stated that he did not fear being treated unfairly by the court itself, but feared serious harm at the hands of corrupt police before he reached any court hearing, and that he would otherwise have difficulty defending criminal proceedings against himself. He also continued to fear serious harm from his extended family arising from the dispute.

- 3 The respondent refused the protection claim on the grounds the appellant's account was not credible, for reasons set out in the decision letter.
- 4 On appeal, the judge also found that the account not credible, for the following reasons, in summary:
- (i) the appellant's failure to pursue an asylum claim that he had made in Italy was damaging to his overall credibility; he had been inconsistent in his reasons for wanting to leave Italy, saying that it was easy for those he feared to travel from Libya (neighbouring Egypt) to Italy to find him, and yet he had approached some Egyptians in Italy after he had been released from detention to secure money to enable him to leave that country [12-14];
  - (ii) when giving oral evidence in cross examination, the appellant gave extraneous information not directly concerning the questions put; his evidence was difficult to follow, and he became agitated and belligerent [20];
  - (iii) having suggested that he possessed further evidence available on his mobile phone, he was inconsistent as to what such evidence might be [22];
  - (iv) the appellant stated that his case had proceeded to the Court of Appeal in Cairo, and that it was not possible for court documents to be sent back to the local court in Mansoura; but then contradicting himself, stating that he could get papers to be sent back from the Cairo court, but that this would cost a lot of money; further, that to do so he would need to be 'in prison' [23]; this was inconsistent with his witness statement which stated that he would have to be merely present in the country to do this [24];
  - (v) he was inconsistent about the number of potential witnesses that maybe called in any proceedings against him [34];
  - (vi) he was inconsistent regarding his claimed knowledge about the nature of the proceedings [35];
  - (vii) he had left Egypt using his own passport [36]; whilst the judge noted country evidence suggesting that "Not all people with charges against their names (or trials or appeals pending) are automatically put on the warning list, and is up to the Prosecutor General to add their names", it was not plausible that

a person facing so serious a charge or conviction, relating to the murder of a child, would not be placed on such a warned list [37]; his ability to leave the country on his own passport was highly damaging to his overall claim [38];

- (viii) it was not plausible that he professed to have no knowledge about why his brothers were subsequently cleared, despite his inquiries and despite his admission that he remains in regular contact with his family [39];
- (ix) the judge held that the appellant was not part of an incident in which his cousin's child was killed, and that neither he nor anyone was facing or had faced charges or been convicted of any offences in relation to that incident [40].

5 The appellant applied for permission to appeal against the decision in grounds dated 21 September 2018, arguing that the judge erred in law, in summary, as follows:

- (i) in making an adverse credibility finding on the grounds that the appellant had failed to pursue his asylum claim in Italy, the judge had erred in law in failing to have regard to evidence, said to have been given by the appellant (not stated where), that 'the Egyptians who helped fund his onward travel to France were from his area and already knew he was fleeing because of the tribal/family feud/Al-Tar vendetta'; the judge failed to take the evidence into account, and attached 'too much weight' to this issue;
- (ii) in finding that the appellant had been inconsistent in his oral evidence, the judge proceeded under a mistake of fact; the grounds stated that "I have checked my notes taken by hand at the hearing and can confirm that I recorded appellant (*sic*) as stating that he would have needed to be present in "person", and not in "prison" to assess (*sic* - access?) the records";
- (iii) in finding it implausible that the appellant had been able to leave the country using his own passport, the judge had failed to take into account that he had left the country four days before being wanted/convicted (both terms are used in the grounds); the judge's reasoning for finding against the appellant in being able to leave Egypt legally was inadequate; the judge failed to take into account the objective evidence on the point;
- (iv) when considering, in the alternative, the appellant's claim at its highest, and in finding that there would be effective protection and internal flight available to the appellant, the judge erred in law in failing to have adequate regard to the country evidence on the availability of state protection in family or tribal feuds.

6 Permission to appeal was granted by First-tier Tribunal Judge O'Keeffe on 4 October 2018, on the grounds that the argument about the judge potentially having proceeded under a mistake of fact as to the appellant's oral evidence was arguable. Although the other grounds were described as little more than a disagreement, permission was granted on all matters.

- 7 I have heard from Mr Madubuike, who also appeared before the judge. I did not need to hear from Mr Tan.

### Discussion

- 8 In his first and second grounds, the appellant asserts, in essence, that the judge failed to make a proper note of the evidence, and proceeded under a mistake as to the appellant's actual evidence. However, although the appellant makes such assertions in the grounds of appeal, the appellant has not, either himself or through his advocate, evidenced what he says his oral evidence was. There has been no compliance with BW (witness statements by advocates) [2014] UKUT 568 (IAC) (which in any event merely repeats guidance given in earlier authorities); no handwritten or typed copy of Mr Madubuike's note of evidence has been submitted, and there was no statement of truth accompanying the grounds of appeal. There is therefore no evidence supporting the contentions made within the grounds, that the appellant's evidence had been something other than that recorded by the judge.
- 9 The second ground involves the scrutiny of only one particular word within Mr Madubuike's note, and Mr Tan indicated that, notwithstanding the appellant's non-compliance with relevant procedural authority, he was prepared to look at that particular section of Mr Madubuike's note. In fact, both parties agreed that Mr Madubuike's note actually read: "I can't do it while abroad, I need to be present at the point of application".
- 10 It can therefore be seen that Mr Madubuike's note would not in fact establish that the appellant had stated that he needed to be present 'in person', as alleged in the grounds. There would therefore be no evidential foundation for the appellant's contention that the judge had mistaken the words 'in person' for 'in prison', even I formally admitted Mr Madubuike's note into evidence, which I do not. I find that the appellant's point in ground two is not made out.
- 11 However, it is also part of the appellant's case the judge failed to take into account certain evidence about what fellow Egyptians the appellant met in Italy. Mr Madubuike only clarified in the course of oral submissions, that the reference in the grounds of appeal to the appellant's evidence that 'the Egyptians who helped fund his onward travel to France were from his area and already knew he was fleeing because of the tribal ... feud' had been in oral evidence. Again, I pointed out to Mr Madubuike that although the appellant made certain assertions within grounds of appeal, there was no evidence from the appellant, or from Mr Madubuike, as to what the appellant's oral evidence was said to have been. In circumstances where the appellant has failed to follow relevant procedure, as set out in BW (witness statements by advocates), I was not prepared to permit Mr Madubuike to read out any other part of his own record of evidence, and I did not invite Mr. Tan to peruse that document. I distinguish my approach in this regard from my decision to permit Mr. Tan to peruse the other part of Mr Madubuike's note (in relation to the

second ground) on the grounds that that matter required the consideration of the presence (or, as it turned out, the absence) of only one word.

- 12 It is simply not appropriate that the Upper Tribunal should be presented with assertions contained only in grounds of appeal that a witness's evidence had been something other than that recorded by the judge, and yet no effort be taken on the part of the appellant or their representative to put in evidence what his oral evidence had actually been. The relevant authorities are not only common sense, but are long-standing, and ought to be known and applied.
- 13 In any event I find that even if the appellant had given the evidence that he alleged regarding the identity of the Egyptians from whom he had sought assistance, I cannot see that such evidence would have been likely to make any difference to the judge's approach to the issue; if the appellant was afraid of associating with Egyptians present in Italy on the basis that this might increase the chances of his whereabouts becoming known to those in Egypt who intended him harm, then it seems logical that the risk of that happening would be increased if the persons he was associating with in Egypt had been made aware that he had fled Egypt because of a tribal/family feud. The appellant had not made out any material error of law.
- 14 I find that the judge was perfectly entitled to treat as militating against the appellant's credibility that he had been able to depart Egypt using his own passport four days prior to his conviction for a serious offence. The judge clearly took into account the relevant evidence about the operation of a 'warning list' in Egypt, and gave reasons which are adequate in law for finding that due to the seriousness of the matter that the appellant was accused of, it was likely that the appellant's name would have been put on a warning list. Mr Madubuike appeared at one stage to suggest that the evidence indicated that persons would not be put on a warning list prior to actual *conviction*. However, that assertion defies common sense, and indeed is inconsistent with the terms of the guidance itself, which refers to "...not all people with *charges* against their names (or *trials* or appeals pending) ...(etc)" (emphasis added). The inference is that *some* people facing charges or trial (both being at pre-conviction stage) are put on the warning list. There is nothing in the appellant's point.
- 15 Finally with regard to the fourth ground of appeal, I note that no particular country information is set out in the ground which is said to have been left out of account by the judge when assessing the availability of effective protection or internal relocation. Further, Mr Madubuike did not pursue the ground in oral submissions. The point is academic in any event, given that the appellant's challenge to the adverse credibility findings has failed.

## Decision

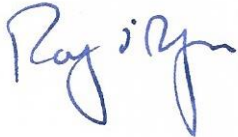
The making of the decision did not involve the making of any material error of law.

I do not set aside the judge's decision.

I dismiss the appellant's appeal.

Signed:

Date: 16.1.19



Deputy Upper Tribunal Judge O'Ryan

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

This appeal concerns a protection claim. Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed:

Date: 16.1.19



Deputy Upper Tribunal Judge O'Ryan