



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

Appeal Number: PA/02509/2020

THE IMMIGRATION ACTS

Heard at George House, Edinburgh

**Decision & Reasons
Promulgated**

On the 1st December 2021

On the 22nd December 2021

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

**A H A G
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Winter, Counsel, instructed by Maguire Solicitors

For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant, who was born on 23 November 1997 and is a citizen of Egypt, appealed to the First-tier Tribunal against a decision of the respondent dated 1 March 2020 refusing the appellant's claim for international protection. In a decision promulgated on 5 March 2021, Judge of the First-tier Tribunal Komorowski dismissed the appellant's appeal on all grounds.

Background

2. The appellant is a Sunni Muslim and lived with his parents and four younger siblings, in Borg Meghazel, Kafer el Sheikh in Egypt. The appellant claims his problems began in October 2015, indicating that Egypt was unsettled from 2013 to 2016 following the 2013 military coup. The appellant claims that the Al Rami police station, in the neighbouring village, was set on fire by unknown person. On the following day, the appellant claims to have been in a café with 3 friends when about 6 police officers approached them, asking for identification. The appellant claims that the officer recognised the appellant's father's name. The appellant claims his father had worked as an Iman of a local mosque and had been vocal in his opposition to the Sisi government. The appellant's friends were allowed to leave but the appellant (and some others in the café) were arrested. The appellant claims to have been taken away (blindfolded) and interrogated the next day. He claims he was held in a security forces building and was accused of burning down the Al Rami police station and of being involved with the Muslim Brotherhood, neither of which were true. The appellant claims he was tortured physically and verbally. The appellant claims to have been held for 4 months and was then moved, ultimately to the medical unit, as he claims two of his heel bones were broken as a result of the beatings. The appellant was released in April 2016 on condition that he gather and report information about the Muslim Brotherhood and that he report to the police once a week. The appellant's father made arrangements for his departure from Egypt. The appellant travelled through a number of countries including, he claims, spending over six months in a hospital in Germany as a result of the injuries sustained in detention, which he claims resulted in metal plates being inserted in both his heels. The appellant then spent almost 2 years in Belgium before arriving in the UK in March 2019. The appellant claims his family in Egypt have told him that the security forces are still looking for him.

3. Judge of the First-tier Tribunal Komorowski rejected the appellant's claims and was not satisfied that the appellant had demonstrated that there was a reasonable degree of likelihood that he had been detained and tortured or that, as the appellant claimed (and the appellant provided, for his appeal, a letter from his lawyer in Egypt and a letter from the prosecutor) that he had now been convicted and sentenced to five years' imprisonment for, amongst other things, setting fire to the police station and being a member of the Muslim Brotherhood. Judge Komorowski was satisfied that the lawyer's letter was not reasonably likely to be a genuine document authored in good faith (paragraph 15). Judge Komorowski also identified difficulties with the prosecutor's letter and was satisfied that the appellant had produced false documents (paragraph 22). Judge Komorowski set out at paragraph 24, reasons for rejecting the appellant's account of his arrest, detention and torture. At paragraphs 25 to 27 the judge addressed the corroboration of the appellant's account, attaching little weight to the letters the appellant claimed were from his father and his friend. Although the appellant accepted the psychologist's report, that

the appellant likely has PTSD, the judge noted that there are multifarious other potential causes of PTSD and given the scale and nature of the problems with the appellant's credibility, the judge was not satisfied that this diagnosis meant that the appellant was telling the truth. The judge noted the lack of any medical evidence that might have supported the appellant's claimed injuries to both his heels, which might reasonably have been available, including to confirm his claim to have had metal plates inserted. The judge rejected the appellant's credibility and dismissed his appeal on all grounds, the judge also not being satisfied that there was any sustainable Article 8 argument given the brief time he had been outside of his country of origin and the lack of any reasons, other than his rejected protection claim, why there would be any obstacles to his reintegration on return.

Grounds of Appeal

4. The appellant appeals with First-tier Tribunal permission on the following grounds (in summary):

Ground 1

That the judge erred in law in relation to the letter from the lawyer:

- (i) At paragraphs 22 and 25 by adopting a contradictory approach to that set out at paragraph 15 and by finding that the appellant has put forward false documents and by failing to explain what evidence was relied on to reach that conclusion;
- (ii) At paragraphs 23 and 25 by effectively stating that as the letter from the lawyer is disbelieved, the judge was going to disbelieve everything else. This has a knock on consequence in the judge finding at paragraph 25 that the appellant's father's letter and his friend's letter attract little weight due to the finding on the lawyer's letter;
- (iii) At paragraph 18 the judge falls into an error similar to that identified at paragraphs 34-42 of **PJ (Sri Lanka) v Secretary of State for the Home Department [2015] 1 WLR 1322** as the judge failed to recognise that the respondent did not raise any doubts as to the position of Tariq Anwar El-Deeb as a lawyer;
- (iv) In the alternative that the respondent did challenge the position of Tariq Anwar el-Deeb and in any event where the respondent challenged the prosecutor's letter, the judge erred in failing to recognise the duty on the respondent to verify the letter and/or prosecutor's letter (and reliance was placed on a number of authorities including **AR v Secretary of State for the Home Department [2021] CSOH 10**);
- (v) In any event, the First-tier Tribunal acted in a procedurally unfair manner where the appellant was not given fair notice of the

issues raised at paragraphs 18-19 of the decision and the Tribunal ought to have adjourned to allow the appellant to make further enquiries with the lawyer;

- (vi) The judge effectively doubted the way in which the letters from the lawyer and the prosecutor were written (paragraphs 18(i), (ii), (iii) and 19-21) but failed to give the benefit of the doubt and has not allowed a positive role for uncertainty. At paragraphs 1, 13 and 14 the judge states that adverse credibility findings have been reached before looking at the evidence and when the evidence is looked at, no room is given for any favourable view of the evidence being taken;
- (vii) The First-tier Tribunal erred at paragraphs 25-26, in relation to the letters from the appellant's father and friend and the psychological report by allowing the adverse credibility findings to sway the assessment of the other evidence and reliance was placed on **AR [2017] CSIH 52**. The judge fell into the same error at paragraph 28 in respect of the corroborative evidence;
- (viii) At paragraphs 25, the fact documents do not emanate from disinterested persons is not an adequate reason to reject the letters;
- (ix) Although the judge cites, at paragraphs 1 and 9-10, the correct standard of proof, the language throughout indicates that a higher standard was applied, in particular the use of phrases such as 'substantially true' (paragraphs 1 and 13) and treating the appellant's evidence with the 'utmost suspicion' (paragraph 23).

Ground 2

That the judge erred in law at paragraph 24(i) when finding it inherently unlikely that the authorities could successfully conceal all reference to both the fire raising itself and the subsequent arrest. In finding it inherently unlikely the First-tier Tribunal has misapplied the law and in any event, if there was a cover-up, it is not likely that there would be any publications.

Error of Law Discussion

Ground 1

5. It is the appellant's case (and Mr Winter elaborated on the grounds of appeal and also relied on the case law bundle which runs to 157 pages) that in essence the First-tier Tribunal did not properly consider the documents produced, in particular the lawyer's letter and the prosecutor's letter. Mr Winter indicated that he was no longer seeking to rely on Grounds 1(v) and 1(vi) and had no submissions to make on these grounds. There was no merit in either ground, including that the appellant was on

notice that both credibility and the reliability of the documents were at issue and that the First-tier Tribunal properly applied the law in relation to the lower standard of proof and the benefit of the doubt (including as highlighted at paragraph 10 of the decision and reasons). Neither of these grounds were made out.

6. In respect of Ground 1(i), it was Mr Winter's submission that the judge fell into the same error identified in **AJ (or J) v Secretary of State for the Home Department [2012] SLT**. Reliance was placed on **RP (Proof of Forgery) Nigeria [2006] UKAI0086** considered in **AJ** and which highlighted that an allegation of forgery needs to be established to a high degree of proof by the person making the allegation. When read fairly and holistically, the judge was not making a legal finding that the documents in question were forgeries, but rather applied, in substance if not always in form, the approach in **Tanveer Ahmed [2002] UKIAT 00439**, which remains the correct approach (see including **QC (verification of documents; Mibanga duty) China [2021] UKUT 00033 (IAC)**). What the judge was saying, in terms, was that the documents in question could not be regarded as reliable. The judge clearly stated the position at paragraph 15:

"I am satisfied that the lawyer's letter produced by the appellant-is not reasonably likely to be a, genuine document authored in good faith. It is not necessary for me to determine whether it is a forgery, or whether it genuinely emanates from 'a lawyer but has been written dishonestly by that lawyer".

7. The fact that the judge went on, on several occasions to use the words 'false', rather than, for example 'not reliable' is not a material error, such that the decision would fall to be set aside; the judge gave clear and sustainable reasons why none of the documents produced could be relied on as claimed, including that there was no explanation as to how the lawyer's letter, which was submitted after the respondent's refusal (which had observed that there was no evidence that the appellant was currently wanted), was obtained by the appellant. In addition the judge set out a number of questions raised by the letter, including in relation to dates, including that the letter itself was undated, that there was no date given for when the lawyer had been instructed and the letter refers to the appellant being convicted on 14 September 2016 and his father being interrogated about his son's whereabouts on 20 September 2016. The judge noted that if the appellant's father was told when interrogated in 2016, of his son's conviction the appellant might have been expected to have mentioned this at his January 2020 interview. If his father was not told at that point, this raised the question of when and how he did find out about his son's conviction. The judge raises further questions about the contents of the lawyer's letter and notes that the letter refers to the prosecutor's letter (which also lacked a full date) which the appellant also provided, but provides no records of the claimed trial and conviction, despite the fact that the respondent's review remarked on the absence of such evidence.

8. It was open to the First-tier Tribunal to not be satisfied that the documents produced could be relied on as the appellant claimed. I take into account that the judge set out his detailed self-direction on the correct standard of proof at paragraphs 9 and 10 and reminded himself throughout the decision of the correct standard, including at paragraphs 13 and 28, where he sets out his overall credibility conclusions, that the fact that the appellant has been dishonest in one aspect of his claim does not necessarily mean he has been dishonest as to the other. These general directions, whilst not specifically addressing the documents, highlight the judge's proper consideration of the evidence, in the round. It is clear that the First-tier Tribunal did not view the documents in isolation, but considered them in their entirety in connection with the rest of the evidence. The First-tier Tribunal applied the correct approach, approved in **Mibanga v Secretary of State for the Home Department [2005] EWCS Civ 367**. This was recently highlighted by the presidential panel in **QC**, reminding that the actual way in which the fact-finder goes about the task of considering all the evidence is a matter for them: 'one has to start somewhere'. What matters, is whether the decision contains legally adequate reasons for the outcome. In a decision, that was both careful and comprehensive, that is what the First-tier Tribunal did. Although I was referred to **R (Gomez-Salinas) v Secretary of State for the Home Department [2001] EWHC 287**, this is not a case where the First-tier Tribunal put the cart before the horse.
9. It is not correct to say, as ground 1(ii) asserted, that the judge effectively stated at paragraphs 23 and 25 that he was 'going to disbelieve everything' as he disbelieved the letter from the lawyer. There was no error in the judge viewing other evidence in light of the findings made, as it is clear that he did not treat those findings as inevitably determinative. The judge addresses this very issue on at least two occasions, including at paragraphs 28 (as highlighted in the preceding paragraph of this decision) and 14, where he indicates that it is 'convenient' to set out his findings on the appellant's claimed conviction in absentia first, but stated that he had 'not lost sight of the logical possibility of the appeal succeeding on the basis that the appellant was detained and tortured (but not convicted in absence)'. Given the extent of the difficulties disclosed by the documentary evidence, as set out in considerable detail by the First-tier Tribunal from paragraphs 15 to 23, there was no error in the judge attaching significant weight to those findings, as he did at paragraph 23 where he found that he should treat 'anything said by, or produced by the appellant with the utmost suspicion'. Again, at paragraph 28, the judge reminds himself that dishonesty in one aspect does not necessarily mean dishonesty in other aspects.
10. Although Mr Winter relied on **PJ (Sri Lanka) v Secretary of State for the Home Department [2015] 1 WLR 1322; AR [2017] CSIH 52 (paragraphs 34-42)**, submitting that the First-tier Tribunal had fallen into a similar error in doubting the document from a lawyer on a significantly flawed basis, that submission was misconceived. This case can be distinguished from **PJ (Sri Lanka)**, including as in that case there were

two lawyers acting independently to obtain the same material from a court on separate occasions and at paragraph 41, the Court of Appeal found that 'once it was established that the documents in question originated from a Sri Lankan court, a sufficient justification was required for the conclusion that the claimant does not have a well founded fear of persecution'. In this case there were no court documents, but rather, a lawyer's letter and what was claimed to be a prosecutor's letter and both the respondent and the First-tier Tribunal raised concerns in relation to the lack of trial and conviction records/papers. The respondent did not accept that the appellant was reliable or that any of the documents he had produced could be relied on. Whilst the grounds claim that the First-tier Tribunal was in error, as the Home Office did not specifically raise any doubts about the position of Tariq Anwar El-Deeb as a lawyer, the Home Office did not find any of the documents to be reliable and the judge was entitled to identify the significant difficulties he did with the claimed conviction as identified in the lawyer's letter, including the multiple problems with that letter, and the prosecutor's letter he claimed to have obtained. As the Upper Tribunal reminded in paragraph 23 of **QC**, the fact that lawyers may have been involved does not mean the documents they produce are for that reason reliable. In finding, at paragraph 22, that the appellant had 'knowingly put forward false documents, namely the lawyer's letter and prosecutor's letter,' the First-tier Tribunal was making a finding that those documents could not be relied on. In finding that they were 'false as to their contents. It might be they are false as to their authorship also' the judge was implicitly acknowledging that he need only make a finding about the reliability of the documents and that, as he had set out at paragraph 15, he need not determine whether the documents were forgeries.

11. It was further submitted (and Mr Winter helpfully reviewed the line of authorities from **PJ (Sri Lanka)**, onwards, including **AR [2017] CSIH 52; AR [2021] CSOH 10; QC (verification of documents; Mibanga duty) China [2021] UKUT 00033 (IAC)**) that the First-tier Tribunal erred by failing to recognise that there was a duty on the Home Office to verify the letter from the lawyer and/or the prosecutor's letter, including reminding that adverse credibility findings are not determinative of whether the duty arises, where the documents are central to the claim and the documents could be easily verified. Again that submission is misconceived.
12. As indicated in **PJ (Sri Lanka)**, the authentication of documents by the respondent is the sort of exercise that will only arise exceptionally (being an indicator of frequency rather than a legal test). As summarised in **QC**, at paragraph 24:

'..in order to engage the obligation, the document in question needs to be at the centre of the request for protection. Even then, there should be a simple process of inquiry that will conclusively resolve both authenticity and reliability. Given the status of the body that had produced the documents in Singh v Belgium, there could be little doubt that, if authentic, what the documents said could also be assumed to be reliable. But, as the Tribunal pointed out in Tanveer Ahmed, in other cases involving

foreign documentation, the discovery that the document emanates from a genuine official source may have little or nothing to say about the reliability of the contents.'

13. Although it was claimed that the documents were central to the appellant's case, it is not the case that all the documents can be easily authenticated. In relation to the prosecutor's letter, investigations could not be easily made without disclosing information about the appellant to the authority from which he claims a risk of persecution. In relation to the lawyer's letter I note what was said in **QC**, at paragraph 63 including that where every document of a kind which is commonly encountered by the First-tier Tribunal were required to be verified by the respondent, this would be entirely disproportionate. Even if that were not the case, if the documents were shown to genuinely derive from the sources claimed, it is not the case that such authentication would be unlikely to leave any 'live' issue as to the reliability of the contents (and the First-tier Tribunal judge expressed his doubts including at paragraph 22). This is not one of the rare cases where the duty to verify arose and the First-tier Tribunal cannot therefore be criticised for the approach taken.
14. Mr Winter argued that, at paragraphs 25 and 26, the First-tier Tribunal materially erred in its approach to the letters from the appellant's father and friend and the psychological report, in allowing the adverse credibility findings to sway the assessment of the other evidence. Reliance was placed, including on paragraph 34 of **AR [2017]**. That submission is not substantiated when the judge's approach is properly considered, including that at paragraph 25 there were a number of reasons why he attached little weight to the letters said to be written by the appellant's father and friend, including that there was no evidence either as to how, or when these were received. The fact that the judge also had in mind that other documents had been produced which could not be relied on, was just one factor in his holistic assessment. Although again the judge's reference to the letters not emanating from 'disinterested individuals' was criticised, it is not the case that the judge rejected this evidence because it was self-serving, which in itself might have been inadequate reasoning; again it was one factor in his assessment in the round. In respect of the psychology report, the judge did not reject this evidence; on the contrary, he accepted the likely PTSD diagnosis. However, it was open to him, for the reasons he gave, having considered all the evidence in the round, to not be satisfied that such disorder had been caused for the reasons claimed by the appellant.
15. Equally, there was no merit in the submission that the judge, whilst citing at paragraphs 1 and 9-10 the correct standard of proof, had through his use of language such as 'substantially true' and treating the appellant's evidence with the 'utmost suspicion' demonstrated that a higher standard of proof was applied. Whilst the judge might have used different language, his careful consideration of all the issues, including his frequent self-directions throughout the decision, not only at paragraphs 1 and 9-10

but also paragraph 28, discloses no material error in what was a clear and consistent application of the correct standard of proof.

16. In conclusion Ground 1 is not made out.

Ground 2

17. In relation to ground 2, it was argued that the First-tier Tribunal erred in making a finding that something was ‘inherently unlikely’ at paragraph 24)i) . Reliance was placed on paragraph 28 of **KB & AH (credibility-structured approach) Pakistan [2017] UKUT 00491 (IAC)**. **KB & AH** reminds that assessment of credibility is a ‘highly fact sensitive affair’. Paragraph 28 of **KB & AH**, whilst reminding that a certain degree of caution is needed in the application of plausibility, confirms that it is a valid indicator or factor when considering credibility. The citation from **HK v Secretary of State for the Home Department [2006] EWCA Civ 1037** at paragraph 28 of **KB & AH** reminds of the difficulties with ‘inherent probability’ including that much of the evidence will be referable to societies with customs and circumstances very different from those with which the fact-finding tribunal has experience.

18. It was the First-tier Tribunal’s finding that it was inherently unlikely that the authorities would have successfully concealed all reference both to the fire-raising and to the subsequent arrests. If that finding were made in isolation, it might well be considered to not have exercised the degree of caution urged by **KB & AH**. It was not; the judge went on make a number of findings, including, in respect of the claimed concealment of the events, finding that ‘no evidence was produced as to the Egyptian authorities’ practice or capacity to suppress reporting in traditional and social media, so as to avoid any mention of rebellious or riotous incidents’. It was open to the judge to find as he implicitly did, that such ought to have been reasonably available. The judge’s plausibility findings were also not made in isolation, but sits alongside a series of negative credibility findings, both in relation to the reliability of the documents produced (paragraphs 15-23 and 25) and the appellant’s credibility generally (at paragraphs 24 -27), the majority of which have not been challenged. For example, the judge was entitled to find (with such findings not being challenged) the appellant’s credibility damaged as he did, at paragraph 27, due to the lack of any evidence, without good explanation, of evidence, for example in the form of a medical report. Such evidence might have supported the appellant’s claim that he had suffered very specific injuries to both his heels (and subsequently had metal plates fitted) as a result of claimed torture. The judge’s implausibility finding at paragraph 24(1) must be seen in the context it was made, as part of a holistic credibility assessment, resulting in the multiple sustainable findings made. Ground 2 is not made out.

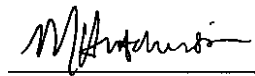
Notice of Decision

19. The decision of the First-tier Tribunal does not disclose an error of law and shall stand.

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

As this is 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 him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed



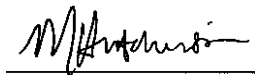
Date: 15 December 2021

Deputy Upper Tribunal Judge Hutchinson

**TO THE RESPONDENT
FEE AWARD**

As no fee is payable and the appeal dismissed, I make no fee award.

Signed



Date: 15 December 2021

Deputy Upper Tribunal Judge Hutchinson