Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07815/2019 (H)

THE IMMIGRATION ACTS

Heard remotely and at Field House	**Decision & Reasons Promulgated**
On 13 May 2022	**On 17 June 2022**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

A J K
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr Tufan, Home Office Presenting Officer
For the Respondent: Mr Greer, instructed by The Manual Bravo Project

This has been a hybrid hearing which has been consented to by the parties. The form of the remote hearing was video by Microsoft Teams. The respondent appeared face to face. A hybrid hearing was held because it was practicable to do so and all issues could be determined in a hybrid hearing. The documents that I was referred to are in the bundles on the court file, the contents of which I have recorded. The order made is described at the end of these reasons.

DECISION AND REASONS

1. Although this is an appeal by the Secretary of State, I shall refer to the parties as in the First-tier Tribunal. The appellant is a citizen of Egypt born in 1983. His appeal against the refusal of his protection claim was allowed by First-tier Tribunal Judge Ince ('the judge') for the reasons given in the decision promulgated on 23 December 2019.

2. The Secretary of State appealed, on 13 January 2020, on the grounds the judge had misdirected himself in law, his findings were unsubstantiated and his reasons were inadequate. There was no application for an extension of time.

3. Permission to appeal was granted by Designated First-tier Tribunal Judge Woodcraft on 30 January 2020 for the following reasons:

> "The appellant is a citizen of Egypt. He appealed against the refusal of asylum arguing that he was at risk upon return from his wife's family. The judge allowed the appeal finding at [59] that because of depression the appellant would be unable to find work.
>
> The respondent's grounds of onward appeal argue that if there is no risk from the wife's family, as seemingly the judge found at [58] the appellant could relocate anywhere within Egypt. Arguably there was insufficient medical evidence to support the effect of the appellant's depression on his prospects after return."

4. The appellant submitted a rule 24 response dated 17 March 2020 alleging, *inter alia,* that the application for permission to appeal was seven days out of time and the application should not have been admitted. There was no reason for the delay and the grounds lacked merit.

5. As a result of the global pandemic and the need to take precautions against the spread of Covid-19, the hearing on 8 April 2020 was adjourned. On 16 April 2020, the Upper Tribunal issued a Note and Directions stating it was of the provisional view that it was appropriate to decide the appeal without a hearing. Directions were given to the parties to make submissions on the error of law issues and whether a hearing was necessary. The respondent filed submissions on 28 April 2020 and the appellant filed a response on 29 April 2020.

6. The appeal came before Upper Tribunal Judge Kekic on 20 August 2020. She decided the appeal under Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and considered the written submissions of the parties. She concluded the appeal was in time. At [18] she stated:

> "I consider first the appellant's complaint that the respondent's permission application was made out of time. The determination was sent out on 23 December 2019 and the deemed date of delivery would normally have been 25 December however taking into account bank holidays over the Christmas and new year period, there has not been the seven day delay that the appellant complains of. Judge Woodcraft did not consider timeliness to be an issue when he granted permission and the file does not mark the application as having been received

> late. In the circumstances, I treat the application as having been made in time."

7. Judge Kekic went on to find that the judge's credibility findings were inadequately reasoned (given the appellant had lied about his name, nationality and contacts in the UK), his account was not supported by the documentary evidence upon which he relied and he failed to disclose his claim at the earliest opportunity. In addition, Judge Kekic found there was no medical evidence to support the diagnosis of depression or any professional prognosis. She concluded the judge's findings were speculative and his finding on internal relocation were unsustainable.

8. For the reasons given in her decision promulgated on 25 August 2020, Judge Kekic set aside the decision promulgated on 23 December 2019 and remitted the appeal to the First-tier Tribunal. On 3 September 2020, the appellant appealed to the Court of Appeal and his application was refused by Judge Kekic on 15 October 2020.

9. Following a review of Rule 34 decisions, I issued directions to the parties on 22 October 2021 drawing their attention to the decision of the Tribunal in EP (Albania) & Ors (rule 34 decisions; setting aside) [2021] UKUT 233 (IAC). The respondent was specifically directed to address the issue of timeliness. The appellant submitted written submissions on 5 November 2021 requesting the Tribunal set aside the Rule 34 decision under Rule 43.

10. In my decision dated 28 February 2022, I concluded as follows:

> "4. The respondent's application for permission to appeal to the Upper Tribunal was arguably out of time. In granting permission, First-tier Tribunal Judge Woodcraft failed to consider whether to extend time. The appellant raised this issue in the Rule 24 response. The respondent did not address this issue in response to the Covid-19 directions dated 16 April 2020 and there was no response to the specific direction given on 22 October 2021.
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> 5. Judge Kekic treated the respondent's application for permission to appeal as having been made in time. I am satisfied there has been a procedural irregularity which engages rule 43(2)(d) of the Rules. Further or alternatively, it is in the interests of justice to set aside the decision dated 25 August 2020 on the error of law appeal."

11. In response to directions the respondent submitted a skeleton argument dated 7 March 2022. The matter was listed before me on 13 May 2022. The issue of timeliness was dealt with as a preliminary issue. There was no dispute the grant of permission by Judge Woodcraft was conditional upon the extension of time.

Preliminary Issue

12. Mr Tufan relied on the skeleton argument dated 7 March 2022 and submitted the delay was not excessive. The respondent had miscalculated the period over Christmas as non-working days as a result of a misapprehension of The Tribunal Procedure Rules 2014 ('the Procedure Rules'). The judge in granting permission had overlooked the time limit and the Tribunal should exercise its discretion and extend time.

13. Mr Greer submitted the Tribunal should refuse to exercise discretion to extend time. There was no provision for deemed service. The seven day breach was serious and significant and there was no reasonable explanation. The reason given was the respondent had misunderstood the Procedure Rules. This was not a good reason and it was not in the interests of justice to extend time. The respondent had not been candid in making such a late application to extend time. The appellant had won his appeal and should not have to go through the arduous process of giving evidence again. The grounds lacked merit.

14. I granted the application to extend time, having considered the three-stage approach for relief from sanctions at [14] of the Joint Presidential Guidance Note 2019 No 1: Permission to appeal to UTIAC (August 2019).

15. Firstly, the seven day delay was not significant when viewed in the context of the timing of the service of the decision and the 14-day window straddling Christmas and New Year, of which eight days were deemed non-working days under section 1 of the Procedure Rules. Secondly, the reasons given by the respondent at [7] of the skeleton argument adequately explain the delay when read in the context of the Procedure Rules.

16. Thirdly, and in response to the points raised by the appellant in his skeleton argument: The appellant has been aware since 13 January 2020 that his successful appeal was subject to challenge. There was insufficient evidence before me to show that he has been prejudiced financially or otherwise. The respondent has not failed to co-operate but has been proceeding under a misapprehension. The merits of the internal relocation point were strong. The decision of Judge Kekic has been set aside and the appellant is able to participate in the oral error of law hearing. He has not been disadvantaged by the respondent's seven day delay. Having considered all the circumstances of this case and the overriding objective, to deal with cases fairly and justly, the respondent's application to extend time is granted.

Submissions on error of law

17. Mr Tufan relied on the grounds and submitted the inference that the appellant was suffering from a mental health condition was irrational and unreasoned. There was insufficient evidence to support the judge's finding that internal relocation was unreasonable.

18. Given the problems with the marriage certificate and the lack of weight attached to it by the judge, there was no documentary evidence to support the judge's finding the appellant was married and had children. The judge's credibility findings were irrational and unreasoned. Applying the lower standard, the case was finely balanced and the judge failed to give adequate reasons for finding in the appellant's favour.

19. Mr Greer submitted the respondent's original challenge had evolved into irrationality. Contrary to the pleaded grounds, the judge has given adequate reasons for his conclusions. The judge had the benefit of oral evidence and was entitled to take into account the manner in which the appellant answered questions. The appellant did not have to corroborate his account and there was no requirement to provide documentary evidence. The inference that the appellant suffered from depression was a reasonable one and the judge's reasoning was adequate. The judge's finding on destitution was open to him and the respondent merely disagreed with the judge's findings.

20. Mr Greer submitted the reasons given at [46] to [50] were sufficient to sustain the judge's finding at [51]. The judge adequately explained why the appellant's credibility was not undermined. The judge dealt with credibility in a logical and fair manner. There was no misapplication of section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 ('the 2004 Act'). The judge was not obliged to go behind the case advanced by the respondent. The judge was well aware the appellant had worked in Greece: [22].

21. In response, Mr Tufan submitted the judge should have taken into account the lack of medical evidence and he failed to refer to section 8 of the 2004 Act.

Conclusions and reasons

22. The written grounds specifically plead the judge's credibility findings were not supported by the evidence, in addition to being inadequately reasoned.

> "1. Respectfully, the judge's considerations for allowing the appeal are weak, speculative, unreasoned and unsubstantiated against the evidence."
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> "4. The findings at para 51 are weak, unsure and the appellant's relationship/marriage with his alleged wife and alleged children is wholly unsubstantiated on the evidence/or lack thereof."

23. The judge noted the appellant was very subdued when giving evidence and seemed to have difficulty comprehending the questions. He noted the appellant's claim that his brother sent a copy of the marriage certificate after the appellant signed his statement in September 2019 was incorrect.

The judge formed the view the appellant was struggling to remember anything accurately: [46].

24. At [47], the judge found the appellant had been consistent in his claim that he married without the consent of his wife's family, he had three children, and his wife's brothers kept coming to where he lived, looking for him. The judge noted the appellant did not mention his wife or her brothers at the screening interview but corrected this shortly afterwards having consulted his previous representatives.

25. The judge acknowledged the appellant's attempt to mislead the UK authorities about his identity and nationality at [48]. The judge concluded at [49] that the marriage certificate obtained from the appellant's brother did not assist the appellant in that his wife was not named and the appellant was described as Syrian.

26. The judge attached little weight to the marriage certificate and recorded the appellant, in his asylum interview, could not recall the date of his marriage and details about what happened on the day: [50]. The judge then went on, in the absence of medical evidence, to find the appellant was suffering from depression on the basis he had produced a box of anti-depressant pills.

27. At [51], the judge found the evidence about whether the appellant was married was finely balanced, but applying the lower standard of proof, he accepted the appellant had told the truth about his marriage and having children.

28. I am not persuaded by Mr Greer's submission that the findings at [46] to [50] adequately explain the conclusion at [51]. I find the judge failed to adequately explain why the balance tipped in the appellant's favour given the numerous contrary findings preceding the conclusion at [51].

29. In addition, the judge failed to take into account section 8 in assessing credibility. The appellant lived and worked in Greece for over one year and travelled through Belgium and France on his way to the UK. I am of the view the judge must consider section 8 even if it is not relied on by the respondent in the refusal letter. I find the judge failed to give adequate reasons for concluding the appellant was a credible witness and this conclusion was not supported by the evidence.

30. At [58], the judge found the appellant would not be at risk from his wife's family outside his home area and he went on to consider whether it would to unreasonable for the appellant to relocate.

31. The inference that the appellant suffered from depression was insufficient to support the judge's finding that the appellant would not be able to find work and was likely to be destitute on return to Egypt because of his mental health condition. There was no medical evidence to support the judge's finding and he failed to consider the appellant had worked in

Greece for over a year. The judge's findings on internal relocation were not supported by the evidence and his reasoning was inadequate.

32. Accordingly, I find the judge erred in law in allowing the appellant's appeal against the refusal of his protection claim and I set aside the decision promulgated on 23 December 2021. I allow the respondent's appeal.

33. Having considered paragraph 7.2 of the Practice Statement of 25 September 2012 and the overriding objective to deal with cases fairly and justly, I remit the appeal to the First-tier Tribunal for re-hearing *de novo* before a judge other than Judge Ince. None of the judge's findings are preserved.

Notice of decision

The Secretary of State's appeal is allowed.

The decision promulgated on 23 December 2019 is set aside and the appeal is remitted to the First-tier Tribunal.

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

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

J Frances

Signed Date: 27 May 2022
Upper Tribunal Judge Frances