



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

Appeal Number: AA/12798/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 26<sup>th</sup> April 2016**

**Decision &  
Promulgated**

**On 1<sup>st</sup> June 2016**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**TAREK MOHAMMED SALAH ELDIN MOHAMED FAWZY  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr G Lee, Counsel

For the Respondent: Mr S Walker, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Egypt born on 23<sup>rd</sup> November 1963. The Appellant claims to have arrived in the UK on 17<sup>th</sup> July 2009 with a valid visa and made an in time application for asylum on 11<sup>th</sup> July 2012. The Appellant's application for asylum was based on a fear that if returned to Egypt he would face mistreatment due to his imputed political opinion. It took the Secretary of State some three years to respond to the Appellant's application and it was on 30<sup>th</sup> September 2015 that the Appellant was

issued with a Notice of Refusal. It was at paragraph 13 of the Notice of Refusal observed that since the Appellant had made his asylum application the political situation in Egypt had altered significantly and that the Muslim Brotherhood was no longer in power and had been designated a terrorist organisation. It was therefore considered by the Secretary of State that the Appellant's previous fear of radical Islamists was not one that was well-founded.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Oakley sitting at Hatton Cross on 8<sup>th</sup> February 2016. In a decision promulgated on 17<sup>th</sup> February 2016 the Appellant's appeal was allowed both on asylum and on human rights grounds.
3. On 24<sup>th</sup> February 2016 the Secretary of State lodged Grounds of Appeal to the Upper Tribunal. Those grounds contended:
  - (i) that the First-tier Tribunal Judge had failed to take into account and/or resolve conflicts of fact or opinion on material matters in particular the objective information from the Immigration and Refugee Board of Canada which it was asserted did not indicate any risk to those diplomats hired by the Mubarak regime on return to Egypt;
  - (ii) that the Tribunal made a mistake as to a material fact which could be established by objective and uncontentious evidence, where the Appellant and/or his advisors were not responsible for the mistake, and where unfairness resulted from the fact that a mistake was made. To this end it was submitted that the First-tier Tribunal Judge had mistakenly relied upon evidence relating to the imprisonment of Muslim Brotherhood members as being indicative of a risk to the Appellant on return to Egypt;
  - (iii) the Tribunal Judge had made perverse or irrational findings on a matter or matters that were material to the outcome. It was submitted that the judge's findings in relation to risk on return were based on largely speculation and did not refer to any objective evidence that was indicative of a risk on return to the Appellant and that the findings made by the judge were not open to him to make on the evidence.
4. On 7<sup>th</sup> March First-tier Tribunal Judge Grant-Hutchison found that the grounds were arguable and granted permission to appeal.
5. On 24<sup>th</sup> March 2016 the Appellant lodged a detailed Rule 24 response.
6. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. For the purpose of continuity throughout the appeal process Mr Fawzy is referred to herein as the Appellant albeit that this is an appeal by the Secretary of State. The Appellant appears by his instructed Counsel Mr Lee. Mr Lee is familiar with this matter. He

appeared before the First-tier Tribunal and he is the author of the Rule 24 response. The Secretary of State appears by her Home Office Presenting Officer Mr Walker.

### **Submission/Discussion**

7. Mr Walker contends that the Secretary of State's grounds are predicated on the evidence of the Muslim Brotherhood and that the judge has made a speculative finding that the Appellant would be at risk on return. He relies upon the grounds. He accepts however that the Appellant has been found by the First-tier Tribunal Judge to be credible and to have a risk on return but for the reasons set out in the Grounds of Appeal (as recited above) he contends that the judge has erred in law and that the decision of the First-tier Tribunal Judge should be set aside and the matter remitted to the First-tier for rehearing.
8. Mr Lee takes me to his Rule 24 response. He points out that the Appellant seeks to argue three matters:
  - (i) that the judge failed to take into account the evidence at paragraph 14 of the Notice of Refusal that there were no risks to diplomats who were part of the Mubarak regime;
  - (ii) that mistakenly the judge had relied on evidence about the imprisonment of Muslim Brotherhood members; and
  - (iii) that the judge had speculated as to how the courts in Egypt would view the Appellant's asylum claim rather than to consider any objective indicators.
9. He sets out to address each of these issues specifically. He starts by taking me to paragraph 14 of the Notice of Refusal pointing out that all it does is make reference to the position of members of the Diplomatic Corps generally. He takes me to paragraph 34 of the First-tier Tribunal Judge's decision and the fact that the Appellant has clearly stated in his evidence that he has not discussed or communicated with anyone including the Secretary of State any of the matters with which he was involved as a diplomat working for the Egyptian embassy but that he had been advised by a lawyer friend that it may well be that he would be investigated as a result of leaving the embassy and clearly it would be known to the authorities that he had claimed asylum. At the very least therefore the judge had noted that the Appellant feared that on entry back into Egypt he would be detained at the airport and investigated. Thereafter he goes on to recite the objective evidence at paragraphs 35 and 36 and has gone on to make findings that he was entitled to at paragraphs 39 to 41. He submits therefore that there is no error of law.
10. Secondly he responds to the suggestion that the judge mistakenly relied on evidence about the imprisonment of Muslim Brotherhood members. He submits that the contention is entirely misconceived and that the concept

in which the judge looked at matters is clear. He points out that the evidence refers to people who are anti-government and that it is clear from the decision that the judge knows what the Appellant's claim is as set out at paragraph 34 and that there is information available to show excessive use of force and human rights abuses as set out at paragraphs 36 and 37. He consequently submits that the judge has done nothing wrong and that no material error of law is disclosed.

11. Finally he addresses the contention that the judge has speculated as to how the courts would view the Appellant's asylum claim rather than looking at objective indicators. He submits that the test herein is a very high one and that it would be necessary to show perversity. He takes me to paragraph 39 of the decision and submits that nowhere within that paragraph, or indeed the decision generally, has such a threshold been approached. He contends that the judge has logically interpreted the evidence and submits that there are in this area, and throughout the whole of the decision, no material errors of law. He asks me to dismiss the Secretary of State's appeal.

## **The Law**

12. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
13. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

## **Findings**

14. This matter was not helped by the fact that it took the Secretary of State over three years to respond to the Appellant's asylum application. Such delays can never be helpful particularly when the Secretary of State relies

effectively on a change of circumstances that has arisen during the period of delay as being supportive of its stance for refusing the application. In the light of all of this the judge has carried out a very detailed and thorough analysis and in essence all the Secretary of State can put forward in reply amounts to little more than disagreement. So far as the evidence relating to diplomats is concerned the judge has looked firstly at the objective evidence and then at the facts and assessed the risk. He has at paragraph 34 noted that it is the Appellant's case he would be investigated for leaving the embassy and that therefore there is a risk he would be detained at the airport and investigated and that it is his case that the combination of abandoning his post as a diplomat and claiming asylum would lead to a real risk on return. It is insufficient for the Secretary of State merely to refer to general objective evidence. Each case is fact specific and the judge has looked at the facts of this case and found that the Appellant would be at risk and has thereafter gone on to sum up accurately at paragraphs 39 to 41 of his decision. In particular in paragraph 39 the judge has noted that whilst the penal code does not specifically state that by leaving his diplomatic post and claiming asylum the Appellant would fall foul of the relevant penal codes it would clearly be a matter of interpretation by the courts as to whether that had happened and the judge was perfectly entitled to provide the reasoned findings that he did.

15. Secondly I agree with the submissions made by Mr Lee that it is clear from paragraphs 35 and 36 of the First-tier Tribunal Judge's decision that his references to imprisonment of members of the Muslim Brotherhood and torture are simply to illustrate the nature of the state and that it cannot be inferred that the judge has misdirected himself as to who the Appellant fears upon return. Further I agree with the contention that it is clear from paragraphs 37 and 38 of the decision that the judge was aware that the government had changed but was making the point that human rights abuses by security forces remain widespread and that prison conditions remain very harsh. Consequently it can be concluded that the judge has done nothing wrong in either his analysis of the facts or within his thought-making process and his findings are sustainable and the objection of the Secretary of State amounts to little more than disagreement.
16. Finally at paragraph 39 the judge has applied the correct test of reasonable likelihood. In fact the judge has set out his findings and analysis both well and thoroughly. It was fully open for the judge to conclude that the fact that the investigation was reasonably likely to lead to ill-treatment even if a prosecution did not necessarily follow and consequently the findings and conclusions made at paragraph 41 were open to him. In such circumstances, throughout and overall, this is a judge who has looked carefully at the evidence and made well-reasoned findings. The decision discloses no material error of law and the appeal of the Secretary of State is consequently dismissed.

## **Decision**

The decision of the First-tier Tribunal discloses no material error of law and the appeal of the Secretary of State is dismissed and the decision of the First-tier Tribunal Judge is maintained.

No anonymity direction is made.

Signed  
Deputy Upper Tribunal Judge D N Harris

Date 1<sup>st</sup> June 2016

**TO THE RESPONDENT  
FEE AWARD**

No application is made for a fee award and none is made.

Signed  
Deputy Upper Tribunal Judge D N Harris

Date 1<sup>st</sup> June 2016