



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

Appeal Number: PA/01164/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 6 July 2017**

**Decision & Reasons
Promulgated
On 14 July 2017**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

A G

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Ms Z Ahmed, Senior Home Office Presenting Officer

For the Respondent: Mr E Raw, Counsel instructed by Caulker & Co Solicitors

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the respondent. Breach of this order can be punished as a contempt of court. I make this order because the respondent has claimed international protection and there is invariably a risk in such cases that publicity could itself justify the claim.
2. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal (First-tier Tribunal Judge Keane) allowing the appeal of the respondent,

hereinafter “the claimant” against a decision of the respondent that he was not a refugee.

3. It is clear that this is a decision that troubled the First-tier Tribunal Judge; so much so that he reconstituted the hearing to allow the parties to make further submissions. Permission to appeal was granted by a Designated Judge of the First-tier Tribunal who commented on the grounds being “unusually lengthy” and although permission was given on all grounds the main reason for granting permission was that it was:

“arguable that the judge misunderstood the apparent concession made by the [Secretary of State], who had concluded that the entirety of the [claimant’s] unsubstantiated claim was rejected”.

4. I begin by considering carefully Judge Keane’s decision and his reasons for it.
5. The judge explained that the claimant is a citizen of Egypt who was born in 1987. He arrived in the United Kingdom without permission in January 2013 and by September 2014 he had been sentenced to twelve months’ imprisonment for possessing a bladed instrument. Unsurprisingly the claimant was made the subject of a deportation order and it was the appeal against that order that came before Judge Keane.
6. The judge noted that the respondent’s case was outlined in a “Notice of Decision” dated 12 May 2015. It was the respondent’s case was that the claimant was not truthful and Judge Keane commented on how the claimant’s evidence had been clearly challenged. It was the claimant’s case that he had told the truth.
7. At paragraph 9 of his decision the judge explained why he found it necessary to recall the parties to the hearing. The judge said:

“The [Secretary of State] had at length and most helpfully drawn on the background evidence in respect of Egypt, the extreme harsh stance of the Egyptian authorities towards active members of the Brotherhood and the campaign of arrests, convictions and significant sentences including death sentences which the Egyptian courts have handed down. The [Secretary of State] went on to state (second paragraph on the eighth page of the notice of decision):

‘Based on the above country information it is considered that the Muslim Brotherhood constitutes a proscribed organisation in Egypt. Based on the information that you have provided it is considered that the authorities in Egypt would be interested in detaining and questioning your uncle, if they have not already done so.’”

8. The judge then went on to explain that the reference to the “uncle” necessarily was a reference to the person the claimant had identified as his uncle in his application and although it was perfectly clear that the Secretary of State did not believe the claimant’s own evidence about his own activities and experiences, the judge could not see how the claim for international protection could be resisted because the claimant risked being perceived as the close family member of a supporter of the Muslim Brotherhood.

9. The judge found that being perceived as a family member of the Muslim Brotherhood carried essentially the same risk as being perceived to be a member of the Muslim Brotherhood.
10. All of this was explained in a very carefully worded letter which, correctly in the circumstances, was addressed to each of the representatives who appeared before him and was sent to the parties.
11. There were, in fact, two further hearings. The first was ineffective because of a failure to follow directions. At the second the Secretary of State repeated that it was her case that the claimant was not truthful.
12. The judge considered the evidence and submissions. As indicated above, he did not make any finding on the credibility of the claim. He said it was not necessary to do that because of the “unequivocal concession on the part of the [Secretary of State] that the Egyptian authorities were interested in detaining and questioning [his uncle]”. He then went on to explain why he took that view given the premise which in the judge’s mind had been established unequivocally.
13. Those parts of the grounds that criticise the judge’s findings of fact insofar as they relate to the claimant’s conduct and circumstances are irrelevant. They are not the reasons the judge allowed the appeal. The important question is whether the judge was entitled to find that the concession had been made and if the decision he made was consistent with the concession that he believed had been made.
14. The judge said in paragraph 14:

“The background evidence demonstrates the very significant extent of the interest of the Egyptian authorities in persons involved with the Brotherhood. In addition to the background evidence which the respondent sets out in the notice of decision there was in the [claimant’s] bundle of objective evidence a Human Rights Watch report prepared in 2016 which stated (page 25 of the [claimant’s] bundle of documents) that, ‘those detained include around the number 29,000 Brotherhood members ...’ The [claimant] would be exposed to a risk of arrest and detention given the perception of him which I am satisfied the Egyptian authorities would hold, he too would be at risk of an arrest and detention and subsequent ill-treatment. He could hardly solicit the protection of the Egyptian authorities or secure a safe place of residence.”
15. I am satisfied that the judge was entitled to conclude from the background evidence that members of the Brotherhood in many, if not all, cases face a risk of persecution and those suspected of supporting them face a similar risk. The fact that the claimant denies any such support is irrelevant. An asylum claim is based on perception not on what a person necessarily really believes or thinks. Similarly the grounds contending that the claimant himself had no relevant profile missed the point. The judge’s finding is the claimant is at risk as a relative.
16. In the refusal letter the Secretary of State said that, based on the country information and the claimant’s case, it is considered that the authorities in Egypt would be interested in detaining and questioning the claimant’s uncle and so if, as the claimant contended, he was at risk from his uncle, he could

report his concerns to the authorities in Egypt. Mr Raw was scornful of this argument and described it as a “non-runner”. He said the judge was entitled to find that the distaste of the authorities towards the Brotherhood was so intense that far from assisting the claimant they could be expected to detain and interrogate him to find out more about the claimant’s uncle. The judge understood there was enmity between the claimant and his uncle but was not able to accept that the authorities in Egypt would believe the claimant if he explained that to the authorities.

17. On reflection, I find that the judge erred in accepting the claimant’s case on this point. I do not understand how he was able to conclude from the background material that the claimant would be at risk by presenting himself to the authorities and identifying himself as the estranged relative of a member of the Muslim Brotherhood. I wish to emphasise that I am not saying the judge was not entitled to reach this conclusion. I say that he has not explained adequately his reasons for accepting it. My finding on this point significantly undermines the Decision and Reasons as a whole.
18. I now turn to the interesting question of whether the judge was entitled to find that a concession had been made. It is clear that, on a superficial reading of the refusal letter dated 12 May 2015, the judge was entitled to conclude that it was accepted that the appellant’s uncle was involved in the Muslim Brotherhood and, as is explained in the second paragraph of page 8 of the refusal letter, “the authorities in Egypt would be interested in detaining and questioning your uncle, if they have not already done so”.
19. The grounds supporting the application do not address the point. They give reasons to conclude that the appellant was not truthful about the risks facing his uncle but that is a rather different point. I do not accept that the Secretary of State did make the concession that the judge thought was made. The relevant words have to be set in context. The Secretary of State said:

“Based on the information that you have provided it is considered that the authorities in Egypt would be of interest ...”
20. The letter does not say unequivocally that the information provided was accepted. This was something on which a finding was needed and the judge has not made a finding. Judge Keane was clearly concerned about where his reasoning was leading and that is one of his reasons for ordering a further hearing. He said in that letter, as is set out in his decision and reasons:

“However, such a claim – that [the claimant] might well be perceived by the Egyptian government as a supporter of Muslim Brotherhood, given the close association of family members in their cause – was not expressed by or on behalf of [the claimant] and the [Secretary of State] would surely be taken utterly by surprise if such a finding was to emerge as decisive in my resolution of the appeal. I have decided that the best course would be for me to relist [the claimant’s] appeal as a part-heard appeal for possible directions only.”
21. It would have been very simple if the Secretary of State had made it clear that the apparent concession was never made but that did not happen. However the Secretary of State produced a letter dated 1 June 2016 which was essentially a Further Reasons for Refusal. That letter gives several reasons to

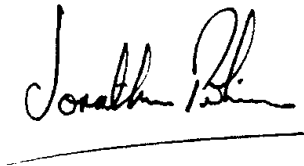
conclude that the claimant is not at risk. It notes that it is the claimant's case that he fears his uncle who is involved in the Muslim Brotherhood but the letter does make clear at paragraph 26 that in the opinion of the Secretary of State the claimant:

"Has not shown that his Uncle is a leading member of the organisation and that the mass arrests of 2013 of Muslim Brotherhood high ranking members' relatives is not an ongoing situation. It is not accepted that your client is in need of international protection."

22. The same letter makes clear at paragraph 21 that it is considered that "those with a high profile in the Muslim Brotherhood or who have been politically active, particularly in demonstrations, may be able to show that they are at risk" but it does not repeat the apparent concession that the claimant's uncle is such a person. I do not know what happened to this letter. It is clearly in my papers but there is no mention of it in Judge Keane's decision and it clearly came as a surprise to Mr Raw.
23. Something has gone badly wrong here. The case that the Secretary of State decided and wanted to be the basis of an appeal in the event of there being an appeal has not been considered by the Tribunal. There has been a procedural error.
24. I have to consider carefully if it is right to give the Secretary of State another chance. If the only thing to consider is this particular case then the answer is overwhelmingly in the affirmative. There has not been a proper consideration of the case that led to the application being refused. The applicant is a young man who was convicted of a serious offence and there are strong reasons for his removal from the United Kingdom but he is to be removed to a country where some people do face persecution. It is more than ordinarily important to get this right.
25. This is not a criminal trial. However the arguments in favour of preventing double jeopardy must be considered. The state cannot go on making decisions if it does not like the outcome of an appeal. I have metaphorically stood back and reflected. Although the First-tier Tribunal Judge's conclusion is perfectly clear I have indicated already that I do not see how it is justified. I find the judge's reasoning on the essential conclusion that the claimant could not look to the Egyptian authorities for protection obscure.
26. I also note that there has been a procedural irregularity although I cannot get to the bottom of the reasons for that. There is nothing before me to show conclusively that Judge Keane erred in not considering the Further Reasons for Refusal. Something somewhere was not done and it did not come to his attention. Nevertheless I have not excluded from my mind the fact that the decision that he made was unsatisfactory because it assume a concession that the Secretary of State did not intend to make.
27. I have decided that the only proper course is to set aside the decision partly because of the procedural irregularity but mainly because of the lack of reasons. It is now for both parties to prepare for the rehearing. This should be done in the First-tier Tribunal because the hearing in the First-tier Tribunal was not an effective hearing on the issues.

28. I do wish to acknowledge that in my judgment Judge Keane was not well served here. He saw a difficulty and asked the parties for help but the Secretary of State, who was in the best position to help, seems to have rather sidestepped the problem. Nevertheless, taking everything into account I have made the decision I have. The First-tier Tribunal erred in law. I set aside its decision and I direct the case be heard again in the First-tier. None of the findings have been preserved.

Signed
Jonathan Perkins
Judge of the Upper Tribunal

A handwritten signature in black ink, appearing to read 'Jonathan Perkins', written over a horizontal line.

Dated 13 July 2017