



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/13788/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons**

**On 25 August 2017**

**Promulgated**

**On 18 September 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW**

**Between**

**MISS HIDY MAGDY MESACK FARAJ  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms S Jegarajah, Counsel, instructed by AMZ Law

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is an Egyptian national who was born on 17 March 1975. She made an application for a visit visa on 15 December 2010 which was granted and was valid from 23 December 2010 until 23 June 2011. The appellant came to the UK in January 2011 and returned to Egypt a month later. The appellant then made a further application for a visit visa on 2 November 2015. This was granted and was valid from 12 December 2015 until 12 May 2016. The appellant arrived in the United Kingdom on 13 December 2015. On 24 May 2016 she was served with an IS.96 as an overstayer. She claimed asylum on 27 May 2016. The appellant's claim

for asylum was on the basis that she is at risk from an individual known as Mohamed El Shrif, who she says wants to marry her and force her to convert to Islam. The respondent refused the appellant's claim on 25 November 2016. The appellant appealed against the respondent's decision to the First-tier Tribunal.

### **The appeal to the First-tier Tribunal**

2. In a decision promulgated on 27 January 2017 First-tier Tribunal Judge Manyarara dismissed the appellant's appeal. The First-tier Tribunal refused/dismissed the appeal on asylum, humanitarian protection and European Convention grounds. The First-tier Tribunal found that there was a sufficiency of protection from the state that the appellant could internally relocate in Egypt, that the appellant did not meet the requirements of the Immigration Rules and that it would not be disproportionate for the appellant to be removed to Egypt.
3. The appellant applied for permission to appeal against the First-tier Tribunal decision. On 10 May 2017 First-tier Tribunal Judge Mark Davies refused permission to appeal. The appellant renewed her application for permission to appeal to the Upper Tribunal and on 10 July 2017 Upper Tribunal Judge Gill granted permission to appeal.

### **The appeal before the Upper Tribunal**

4. There are two grounds of appeal. The first ground of appeal asserts that the First-tier Tribunal failed to act fairly. It is asserted that the judge failed to consider paragraph 2(2)(c) of the First-tier Tribunal Rules, which required her to consider not just sanctions and punitive measures for breach of the Rules but also whether it was fair and just for the appellant to be unrepresented at the hearing. It is asserted that the judge ought to have directed herself to the reported decisions of McCloskey J in respect of procedural fairness. The judge erred in considering whether the absence of a representative would make a difference and concluded that it would not because in her view the appeal was straightforward. However, in so concluding the First-tier Tribunal erred given that this was an asylum appeal and so anxious scrutiny and the higher standards of fairness applied. The merits of the appeal are not relevant. There is no requirement that the appellant should demonstrate materiality in respect of procedural unfairness.
5. Ground 2 asserts that the judge failed to consider the current country situation. The judge erred in consigning her assessment of risk to a country guidance case that was promulgated in 2013. It is set out that a number of incidents since December 2016 have been reported in the public domain. Those developments constitute a dramatic and material change in circumstances since the country guidance case of four years ago. The judge did not undertake a particularised approach in respect of gender. The judge erred in failing to make any findings in respect of the additional fact-finding assessment required when the Coptic Christian is a woman. It was found in the country guidance case that there was in

general inadequate state protection in respect of Coptic Christians. The finding at paragraph 55 demonstrates that the First-tier Tribunal Judge failed to give effect to the generic findings in the 2013 country guidance case that there is as a matter of fact an absence of adequate state protection.

6. In oral submissions Ms Jegarajah submitted that the appellant had paid for representation, the solicitors representing her submitted a poorly written letter that contained lies, they had undertaken no preparation for the appeal at all. There has been recognition that women aged between 14 to 25, who lack a male protector are in need of protection. If the appeal had been properly prepared there would have been a witness statement addressing all the discrepancies. The appellant's Counsel would have presented the best evidence, particularly with regard to the lack of credibility. She submitted that even if the appellant's account was incredible there is evidence in the public domain to show that the situation has deteriorated and that there is a significant risk for the particular category of Coptic women in Egypt. There has been an increased participation of ISIS and if the appellant had been represented by competent solicitors all these matters would have been addressed.
7. Mr Tarlow relied on the Rule 24 response, which sets out that the judge has had regard to the evidence presented by the appellant and to the guiding case law and arrived at conclusions open to her. Noting that the case was a straightforward case it is not clear how representation could have ameliorated the end result of this case, which, on its factual matrix, was bound to be dismissed. It is clear from the appellant's evidence that the authorities have not refused to help her and that she has the option to internally relocate even if there was some credence in her account that she was harassed by Mohamed El Shrif for marriage. Mr Tarlow submitted that in essence this was a stalking case and, as found by the judge in paragraph 55, there is effective protection from the state. It was difficult to see what other conclusion could have been reached even if Counsel had been present to represent the appellant. There was no requirement that an appellant should be represented.
8. In response Ms Jegarajah submitted that good representation can make the difference between winning and losing the case. This was not just a stalking case. If the appellant had been represented she could have made a full case on the objective evidence that is available.

### **Discussion**

9. The First-tier Tribunal with set out with commendable detail the reasons for deciding not to adjourn the matter. These extended from paragraphs 14 to 24. The judge was faced with quite appalling conduct by Shervins Solicitors, who were representing the appellant. At paragraph 21 the judge set out:

“21. Shervins Solicitors have shown a contumelious disregard for the Procedure Rules or the directions of the Tribunal. They have shown a willingness to mislead by suggesting that further evidence is arriving in

24 hours when the appellant says it has not been sent yet, and have further suggested that they would require twelve weeks to consider what only amounts to a single document that is self-explanatory. There has been absolutely no attempt by them to prepare the appellant's case and the suggestion that Counsel could not attend due to extreme weather conditions is unsupported by any evidence. If Counsel had been instructed and had been hindered from attending by the weather, then the Tribunal expects contact to have been made by Counsel or Counsel's clerks."

10. It is clear that the Tribunal considered in very great detail the position that the appellant had been put in by her solicitors and referred to all the evidence in support of an application for an adjournment including the appellant's evidence that she had paid for and was expecting to be represented at the hearing. The Tribunal then considered the case of **VA (Solicitor's non-compliance: Counsel's duties) Sri Lanka [2017] UKUT 00012 (IAC)**. The Tribunal also referred to the decision in **Shabir Ahmed and others (sanctions for non-compliance) [2016] UKUT 00562 (IAC)**. The judge properly considered these cases and applied them to the facts of this case. Quite clearly the judge was entitled to consider there had been serious professional failures by the appellant's solicitors. However, the judge did not pay sufficient regard to the requirement, when considering whether or not to grant an adjournment, that a judge must always yield to the requirement of fairness. The judge, having considered that this was a straightforward case and that the appellant had attended the hearing, decided that she could proceed to hear the appeal. Although the judge reassured the appellant that the behaviour of her legal representatives would not affect her decision and was not held against her it would appear to solely be the behaviour of the representatives that led the judge to refuse to adjourn the hearing.
11. The decision demonstrates that the judge attempted to explain matters to the appellant and to provide her with a full opportunity to participate in the hearing. The decision is careful and well-considered. However, this appellant was not in any way to blame or to have even to any extent caused the significant failings by her representatives. This was an asylum claim. As the judge set out, there was no appeal bundle and there was not even a witness statement prepared on behalf of the appellant. Credibility was in issue. Whilst this is a case that does appear on the face of it to have little prospect of success had the appellant been competently represented, as submitted by Ms Jegarajah, there is evidence that might have been taken into account by the judge that was not drawn to her attention because the appellant was unrepresented.
12. When considering a request for an adjournment the Tribunal must always yield to a party's right to a fair hearing. As was set out in the case of **Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC)** at paragraph 8:

"In determining applications for adjournments, judges will also be guided by focusing on the overarching criterion established in the overriding objective which is that of fairness."

13. Given the need to ensure and always yield to fairness I find that there has been a material error of law in the First-tier Tribunal's decision to refuse to grant an adjournment. I set that decision aside pursuant to section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 ('TCEA').
14. Given my finding on the first ground of appeal I do not need to consider the second ground.
15. The appellant in this case has not had a fair hearing. The Upper Tribunal is not the correct venue for initial fact finding. It is appropriate to remit the matter to the First-tier Tribunal. I remit the case to the First-tier Tribunal for the case to be heard at the First-tier Tribunal Hatton Cross before any judge other than Judge Manyarara pursuant to section 12(2)(b) and 12(3)(a) of the TCEA. A new hearing will be fixed at the next available date.
16. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

### **Notice of Decision**

17. The appeal is allowed. The decision to refuse the adjournment request, on the facts of this case, amounted to a material error of law. I remit the case to the First-tier Tribunal for the case to be heard at Hatton Cross before any judge other than Judge Manyarara pursuant to section 12(2)(b) and 12(3)(a) of the TCEA. A new hearing will be fixed at the next available date.

Signed P M Ramshaw

Date 17 September 2017

Deputy Upper Tribunal Judge Ramshaw

