



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00096/2018

THE IMMIGRATION ACTS

Heard at Field House
On 10th May 2018

Decision & Reasons Promulgated
On 31st May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

Y.I.A.S
(ANONYMITY DIRECTION MAINTAINED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Parkin, Counsel, instructed by Colindale Law

For the Respondent: Mr S Kandola, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Samimi dismissing his appeal against the Secretary of State's decision to refuse to grant asylum and humanitarian protection. The decision of Judge Samimi was promulgated on 8th February 2018. The Applicant was granted permission to appeal by First-tier Tribunal Judge Parkes. The grounds upon which permission was granted may be summarised as follows:

“The grounds argue that the Appellant would be at risk from his family and his brother in particular and that he would not be able to seek the protection of the authorities in Egypt. It is argued that the findings made were perverse. The evidence cited in the grounds indicates that low level supporters of the Muslim Brotherhood are not generally at risk and that is clearly a category the Appellant fell into. The issue with the Appellant’s brother may be relevant but that could raise the question of internal relocation which would have to be assessed. The grounds are arguable on the limited basis indicated above and permission to appeal is granted.”

2. I was not provided with a Rule 24 response from the Respondent, however, was addressed in oral submissions by her representative.

Error of Law

3. At the close of submissions I indicated I found an error of law such that the decision should be set aside, but that my reasons would follow. My reasons for so finding are as follows.
4. In addressing the decision on behalf of the Secretary of State, Mr Kandola indicated that an error was identifiable in the First-tier Tribunal Judge’s decision in respect of an omission on her part in failing to make findings upon the risk on return the Appellant would face in relation to his brother (not the Muslim Brotherhood). In reply Mr Parkin argued for the Appellant that further to that error it would also follow that there would be a consequent omission to consider the sufficiency of protection that would emanate from any identifiable risk from the Appellant’s brother specifically, and that the finding made at paragraph 13 of Judge Samimi’s decision – namely that “the Appellant would also be able to seek the protection of the authorities” – did not extend to this discrete risk.
5. In light of the position taken by the parties, with which I agree, I do find that there is a material error of law in respect of the limited basis upon which Mr Parkin appealed and in respect of the position agreed by the parties, which I shall summarise as follows: The material error of law in the judge’s decision may be summarised as an omission to consider the risk on return in respect of the Appellant’s brother, and in respect of the sufficiency of protection that may be available from the authorities from any risk that may emanate from the Appellant’s brother. That error is wholly due to an omission and is a discrete one, that may be partitioned from the judgment as it stands, and I have been given no reason to set aside any findings within the judgment other than in relation to the discrete omission identified above.
6. In light of the above findings the appeal to the Upper Tribunal is allowed.

Notice of Decision

7. The making of the previous decision involved a material error on a point of law due to the omission identified above and thus represents an incomplete assessment of the

Appellant's protection claim. Consequently that decision shall stand as far as it goes, but it requires supplementation in respect of the remainder of the protection claim.

8. The appeal is to be remitted to the First-tier Tribunal to be heard by a differently constituted bench.
9. The First-tier Tribunal's anonymity direction is maintained.

Directions

- (1) Standard directions are given.
- (2) An Arabic (Middle Eastern/Egyptian) interpreter is required.
- (3) Thus far, only the Appellant is anticipated to give oral evidence.
- (4) The Appellant's representative indicates that expert evidence will be sought in respect of the discrete risk on return and sufficiency of protection identified above and consequently to allow time for the production and service of that expert evidence the appeal is to be listed for the first available date after 10th August 2018 at IAC Hatton Cross.
- (5) Should the parties require any further directions, they must be requested in the usual manner by writing to the Resident Judge at Hatton Cross.
- (6) Given that the Appellant was previously unrepresented at the First-tier Tribunal, and appeared as a litigant in person, but has now retained legal representation, although I do not direct as such, it may be helpful for both parties to re-serve any bundles in a consolidated manner to assist the First-tier Tribunal in deciding the remainder of the protection claim (with the previous evidence that was before Judge Samimi clearly delineated in the index).

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

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 27 May 2018

Deputy Upper Tribunal Judge Saini