



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

Appeal Number: PA/03219/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 4 September 2018**

**Decision & Reasons Promulgated
On 4 October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE ESHUN

Between

**[H H]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Moffatt, Counsel, Simman Solicitors
For the Respondent: Mr I Jarvis, HOPO

DECISION AND REASONS

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Andonian dismissing his appeal against the decision of the respondent made on 17 March 2017 to refuse him asylum in the United Kingdom.
2. The appellant is a citizen of Egypt born on 18 August 2002. He applied for asylum in the UK on 16 September 2016, but this was refused and as he

was a minor at that time, it was considered that as an unaccompanied minor there were inadequate reception arrangements for him in his own country. As a result, he was granted discretionary leave to remain.

3. Permission was granted to the appellant on the basis that it is an arguable error of law that if the appellant has not been able to fully converse with the court then this may have made a material difference to the outcome or to the fairness of the proceedings. The grounds are further strengthened by the detailed statement made by an independent interpreter who was in attendance on the day of the hearing and which was attached to the grounds for permission to appeal.
4. The judge stated that the appellant gave evidence through a professional interpreter. The appellant confirmed that both his witness statements in support of his appeal were true and correct and he relied upon them. The first witness statement is dated 13 October 2016 and this was made in support of his asylum claim. In that witness statement he gave his date of birth as 18 February 2000. He was asked why there was a discrepancy between that witness statement and his claim was that he was in fact born on 18 August 2002 as stated by the Home Office on their official documents. He confirmed that his date of birth was in fact 18 August 2002 but when he was in Italy, he was told that if he could show that he was older then he would get a room for himself at the camp where he was staying with other refugees. Accordingly, he said he was born on 18 February 2000 whereas in fact his date of birth was 18 August 2002. The date of birth of 18 August 2002 has been accepted by the respondent as being his actual date of birth. Consequently, at the hearing before the judge the appellant was 15 years old.
5. The appellant claimed that if he returned to Egypt he would be killed by the men that his late father owed money to. His father told him that he had to pay 1,000,000 Egyptian pounds to the people he borrowed the money from. He said he comes from Kafr El-Shaikh in Egypt. He lived there with his mother, brother and two sisters. His father died about two years prior to his coming to the United Kingdom. When he was alive he was a driver and did removal work. Before he died he borrowed money to set up his own business and this was before the revolution that took place in Egypt in 2011. After the revolution his father lost all he had.
6. The appellant claimed that on 23 November 2015, five men armed with weapons came to his house at night and demanded that he repay them the money his father had borrowed, or they would kill him and every member of his family. The next day the appellant fearing for his life as the elder male member of his family, used his father's good name to persuade a people smuggler to take him out of Egypt and he left the following day from Alexandria. The people smuggler contacted the appellant's mother from Alexandria to tell her that the appellant was leaving Egypt. That was the last time the appellant had any contact with his mother as his mobile phone fell into the sea on the way to Italy.

7. He claimed he left Egypt on 25 November 2015 and travelled by boat to Italy, 21 days later and remained there for five months. He then made his way to Calais, France where he remained for four months in the jungle before coming to the UK in the back of a lorry. He claimed he arrived in the UK on 15 September 2016 and claimed asylum on that date.
8. It was argued before the judge that the appellant was a credible witness and that his account should be accepted. Insofar as risk on return, sufficiency of protection and internal relocation was concerned, it was argued before the judge that the relevant date for the assessment of risk was the date of the hearing, that the appellant would be returned to Egypt as a 15-year old unaccompanied minor. It was also argued that Egypt is a poor country with few economic opportunities. The family is the main economic and social support for most people. Without family support the appellant would be extremely vulnerable and could well end up destitute, trafficked, prostituted or otherwise abused.
9. The appellant said in evidence that when he came to the UK he created a feasible account and then tried to find his family in Egypt but could not do so. He had not attended the Red Cross to find out and did not know anything about the Red Cross. He said in any event he would not want his family to be traced by the Red Cross because they would ask questions about his family and this may bring his family to the attention of the authorities that he is missing, and it may cause a problem to his family.
10. The judge said at paragraph 33 that the appellant told him at this stage that he wanted a break as the cross-examination was coming to an end. The judge rose at 11.20 and returned to the Tribunal hearing room at 11.55. When he returned, Counsel for the appellant said that her solicitor's interpreter had given her some notes which showed that there were certain things that were not properly translated by the court interpreter for the appellant. The judge expressed surprise because he said that if there was anything that was a serious misinterpretation as to what the appellant had said, then he would have expected his instructing solicitor's interpreter to let him know there and then and not near the end of cross-examination and when he had risen to give the appellant a break. There was an adjournment request, because it was said - the court interpreter did not properly interpret the appellant's reply when the appellant was asked as to why the appellant would not wish a charity like the Red Cross to make enquiries as to the whereabouts of his family in Egypt, since the appellant contended that he could not find his family. The solicitor's interpreter said that what the court interpreter had said was that he would be at risk, whereas in fact this is not the case as the appellant had said his family would be at risk and not himself. The judge said the note he had was that the court interpreter had properly interpreted that the family would be at risk. He had not written down that the appellant would be at risk. In fact he had asked the appellant to clarify this issue and the appellant had confirmed that his family would be at risk.

The judge said that further and in addition, the Presenting Officer asked some further questions of the appellant to clarify the discrepancy and the appellant has said that the family would be at risk if a charity from the UK contacted his family in Egypt.

11. The judge said at paragraph 34 that secondly it was alleged that the Presenting Officer had asked why the appellant could not ask some of his father's business colleagues to assist in paying back the debt to the five men, and the appellant had told the judge that the interpreter had interpreted that no-one would help and "you are left on your own unless you do something for someone". The solicitor's interpreter had said that what the court interpreter should have interpreted was that in Egypt nobody will do anything for you for nothing. The judge said that again he did not see any discrepancy there. The question was again asked later by the Presenting Officer and the appellant said that in Egypt nobody will do anything to help for nothing. The appellant added that since the debt that his father had taken out was before the revolution, he did not think that his father's friends would help. The judge said this was the essence of what the appellant had said through the court interpreter and he saw no discrepancy here either.
12. The judge said at paragraph 35 that thirdly, insofar as the date of 25 November 2015 was concerned, the appellant had said that he was told to give a date that he left Egypt. This is what the court interpreter interpreted, but the solicitor's interpreter said that what the court interpreter should have said is that the appellant was told to give some dates he left Egypt. The judge said again he saw no discrepancy here either.
13. The appellant's first ground of appeal argued that the judge's refusal to adjourn to enable proper consideration of the alleged defects in interpretation led to unfairness in the proceedings.
14. Ms Moffatt submitted that the problems with the court interpreter as set out in the statement of the solicitor's interpreter were in reference to the judge's findings at paragraphs 33 to 35 that there were no discrepancies in the interpretations of the three matters raised by the solicitor's interpreter. Ms Moffatt submitted that between the hearing and the promulgation of the determination, the statement by Mr Karwan Hussain, the solicitor's interpreter was sent to the Tribunal by the appellant's solicitor with a letter of complaint dated 12 February 2018. Mr Hussain's statement is dated 4 February 2018. Ms Moffatt said that part of the appellant's responses was not interpreted according to Mr Hussain, in particular, what was said about the business friends of the appellant's father was not recorded by the judge at paragraph 34. Mr Hussain said at paragraph 4 of his statement that [HH] was asked "have you tried others for help?" (his father's contacts, links etc? He replied at first: "we did; they told us it is your family business and the problem that you have to deal with it." At one point the interpreter just simply interpreted his reply

as “no”. Then, when I intervened, and the barrister asked that question to be repeated, his answer changed, and he said “in Egypt people only do favours for you if you do one for them first, so no-one help us”. He also did mention that his father had links, and he personally don’t know them and did not pay much attention to them. Again, this point was not put across fairly.” Ms Moffatt said that this response differed from that of the court interpreter.

15. With regard to the judge’s finding at paragraph 35 Mr Hussain said that the appellant was asked about the date in November etc. His replies were “I was told and advised by my solicitors that there must be some dates in the statement”. (The interpreter said “I was advised to put that date and in one more incident she said a date”, in so doing, she failed to distinguish between dates and date. The appellant said he could not recall the exact date and where it came about but this was not put across.
16. In respect of the judge’s finding at paragraph 33, Mr Hussain in his statement said the appellant was asked if he had tried to contact his family via Facebook and his answer was that he had tried but everyone he tried came back with nothing. Mr Hussain said the court interpreter said “yes I am in contact with my family via Facebook”. Mr Hussain said he had to send a note to the barrister and then get her involved to repeat the question. The appellant was then asked “have you tried the Red Cross or why not trusting them?” And his reply was “if Red Cross goes to my village they will ask about my family, will they not?” Mr Hussain said the interpreter failed to interpret the appellant’s reply as a question. From his understanding of the appellant’s answers, [HH] said he then tried to express his fears of the people finding out that he, the appellant is abroad if the Red Cross goes and asks around about his family. The Red Cross is a foreign organisation and the word would be spread about so that people who are after him “will now know.” Mr Hussain said this point was not put across fairly.
17. Ms Moffatt said that there was confusion about how the appellant’s phone was lost. Mr Hussain spoke to the appellant after the hearing and the appellant told him that he was struggling to understand the interpreter. After the appellant had asked for a break, Mr Hussain said in his statement that he had informed her of these problems and that during the hearing he had sent her a couple of notes but was unable to intervene every time. He gave her some of the notes he had made but was unable to put the problems across comprehensively without being able to sit down and reassemble his notes and go through each question chronologically as he has done in his statement.
18. Ms Moffatt submitted that in the light of the statement by Mr Hussain of the problems with the court interpreter, the judge should have allowed a short adjournment for these matters to be sorted out when she raised them with the judge after the short break.

19. I accept the submissions made by Mr Jarvis on this issue. I find that the statement of Mr Hussain veered into his own personal opinion. I find that when the matters were brought to the judge's attention, he properly considered the complaints and did not err in law in finding that there were no discrepancies in what the appellant said through the court interpreter. I find that the complaints raised by Mr Hussain in his statement in regard to the three matters which were dealt with by the judge in paragraphs 33 to 35 do not reveal any discrepancies between the court interpreter's interpretation and what Mr Hussain claimed were the interpretation of the responses given by the appellant. I reject Mr Hussain's claim that about 50% of the appellant's answers were not interpreted correctly. The three issues raised by Mr. Hussain do not form 50% of the appellant's claim.
- 20.. Mr Hussain said the appellant told him that he was struggling to understand the court interpreter and yet we have nothing from the appellant after the hearing to confirm this.
21. Consequently, I find that the appellant's first ground of appeal is not made out. It does not disclose an error of law in the judge's findings at paragraphs 33 to 35.
22. The judge's conclusions are set out at paragraphs 38 to 51. The judge found that even with the abundance of caution because the appellant is a minor, he was very concerned with the evidence in this appeal. The appellant was claiming that were he to return to Egypt, he would suffer breaches of Article 2 and/or 3 of the ECHR. However, on reading the skeleton argument and also in hearing the appellant's Counsel's closing submissions, that no weight was actually placed on Article 2 and that more weight was placed on Article 3. The judge said Article 3 requires the appellant to show that were he to return to Egypt he would suffer inhuman or degrading treatment or punishment.
23. The judge considered the appellant's evidence that his father had taken a loan from certain individuals before the Egyptian Revolution in 2011. His father died in 2013. The judge said he did not find it credible that the five men whom the appellant feared would take two years or so after the death of his father to attend the appellant's home and to demand their money. He said it was not credible that the 13 year old, as the appellant was at that time, a mere schoolboy, could persuade an agent whose job it is to transport people for a handsome fee, to take this appellant out of Egypt to Italy with no fee on the promise that the appellant would pay him when he got to Italy. The judge said it was not credible that the agent would take this 13 year old schoolboy from Egypt to Italy thinking that the appellant's family were rich when the appellant's father had lost all his money after the revolution as the appellant claimed, and was unable to repay a loan.
24. The judge further found that the appellant knew nothing about the five men, his family knew nothing about them and there was no basis for the appellant therefore to say that the five men had links with the police and

the authorities and would be able to trace him if he moved to another part of Egypt.

25. The judge said whilst he was prepared to accept that the date of 25 November 2015 was an approximate date for a 14 year old to give when he had come to the UK in September 2016, taking into account that he was fingerprinted in or about 6 November 2015 in Italy, and whilst he did not take issue as to the fact of why he came to the UK to claim asylum and no issues taken with respect to the fact that he could have claimed asylum earlier in a safe third country, the judge was not prepared to accept the appellant's evidence as regards his case to stay in the UK.
26. Neither was the judge prepared to accept that the appellant has no family to return to in Egypt. He was an unaccompanied minor at a time when he was granted discretionary leave to remain, because at that time and indeed at the present, for a minor there are no reception facilities there, however the judge found that it was not credible that the appellant's family would have simply accepted that the appellant has left Egypt without any further trace and have lost all contact. The judge did not find it credible that the appellant would not have contacted his mother and family or that he does not know where they are. The judge said the appellant had not given credible evidence as to why he would not wish a charity in this country to locate his family in Egypt. The appellant said he did not want to do that because he was afraid it would put his family at risk. He had not even made any attempt to locate a charity here such as the Red Cross to see the steps that they would take to obtain information. The judge said these are professional organisations that are very sensitive in dealing with fact-finding issues and it is reasonable to conclude that they would have all these factors in mind about the appellant's family being at risk following the investigation if that was the case.
27. The judge said the appellant did not give any credible evidence as to why he did not want the Home Office to trace his mother and other family members in Egypt. The judge said it was not credible that someone owed 1,000,000 Egyptian pounds would not immediately lay claim to it after they knew that the debtor had died and would wait two years for the debtor's family to get over the death before they approached them.
28. The judge said he had read the expert report from Hugh Miles. The expert did not meet the appellant and did not therefore interview him. Based on the documents the expert had seen, his view was that the appellant would not necessarily be at any immediate risk upon his return to Egypt from the Egyptian authorities and that failed asylum seekers are not subject of much interest to the authorities even when they left their country illegally, and the kind of people who could have problems on return at the border are those thought to be connected with the Muslim Brotherhood, or another opposition group as well as suspected or wanted criminals and draft dodgers. The judge found that the appellant does not fit into the above categories of individuals.

29. The judge noted the expert's assertion that if the appellant encounters the police then he would expect the appellant would not be a person of any specific interest to them, the police and security services focus on the military insurgency campaign which the appellant is luckily not involved in.
30. The judge did not accept that the money lenders the appellant fears have influence over the police. Furthermore, they are not from his local area. Since the judge did not accept the appellant's evidence, he did not accept that the money lenders the appellant fears are so powerful that they have at their disposal all the organs of the Egyptian Security Services. The judge found that there was no evidence whatsoever before him that the appellant would be destitute were he to return to Egypt and there was no evidence that he does not have family there. The judge held that he was not prepared to accept that there are any credible grounds for not allowing the Home Office or some other charity to look into his family situation in Egypt.
31. For the reasons given by the judge he dismissed the appellant's appeal on Articles 3 and 2 of the ECHR. As the judge believed that the appellant has family in Egypt, he did not believe that there was any claim as to private life under paragraph 276ADE nor did he consider that it would be disproportionate for the appellant to leave the UK and return to Egypt.
32. Ms Moffatt submitted that the judge held against the appellant his failure to engage with the Red Cross. She said the appellant was scared about repercussions for his family. The respondent had accepted that the appellant was a minor and had granted him discretionary leave to remain. Ms Moffatt said in the Reasons for Refusal Letter the respondent said at paragraph 40 that the appellant does not have adequate reception arrangements in Iran and not Egypt. In any event, she submitted that the respondent in not tracing the appellant's family and granting him discretionary leave as an unaccompanied minor accepted that there were no reception arrangements available to the appellant.
33. She submitted that the Secretary of State's policy is that where tracing is relevant a child's consent is immaterial. She said the Secretary of State had all the information to allow tracing to take place. She submitted that in holding against the appellant his failure to go to the Red Cross, the judge failed to properly take into account the respondent's concession that there are currently inadequate reception conditions to return the appellant to Egypt and that the judge failed to consider objective information about the risks facing unaccompanied minors including abuse and destitution. The fact that the respondent found that there was an absence of adequate reception facilities should have led the judge to find that the appellant has no family available in Egypt.
34. Ms Moffatt relied on paragraph 47 of **DS Afghanistan [2011] EWCA Civ 305**. The Court of Appeal held that the Secretary of State sought to

defeat the claim by reason of the appellant's alleged failure to co-operate with the Red Cross. Tracing work by the ICRC would almost certainly have been assisted by a contribution from the Secretary of State, based on information available to her. The lack of cooperation does not relieve the Secretary of State of her duties. It would be relevant to a decision as to what the Secretary of State was required to do in a particular case and also the eventual decision as to whether the right to claim asylum had been established in that case. That duty cannot be ignored. Accordingly, Ms Moffatt submitted that the absence of adequate facilities should have led the judge to find that the appellant has no family available in Egypt.

35. Ms Moffatt submitted that the judge's adverse credibility findings, which are at paragraphs 38 to 45 relate to the plausibility of the appellant's account and his failure to contact his family. She said the judge made plausibility findings without taking account of the expert evidence and external objective evidence.
36. Ms Moffatt submitted that the judge's finding at paragraph 43 about the appellant's failure to claim asylum in a safe third country indicated that Section 8 was not fatal to the appellant's claim.
37. Mr Jarvis accepted that on the question of tracing the Reasons for Refusal Letter referred to reception arrangements in Iran and not Egypt. He said this error was not material. In any event the Secretary of State's case is that the appellant's complaint was rejected by the Court of Appeal in **DS (Afghanistan)** at paragraph 69. The Court of Appeal held that although the grant of discretionary leave to remain to the appellant was on the basis that the respondent was not satisfied as to the reception arrangements in place if he were returned, this does not show that the respondent was satisfied that no suitable reception arrangements were or could be put in place. The Court of Appeal accepted that discretionary leave policy is applied in a precautionary way. The fact that, at a given moment, the Secretary of State is not satisfied as to the suitability of reception arrangements does not show that no suitable arrangements do or can exist. That will depend on what enquiries have been made and with what results. Unless the respondent has enquired thoroughly and has come to the conclusion that no such arrangements can be made, a failure to be satisfied at a given time does not give rise to any wider inference as to the position. The appellant's submission wrongly equated the proposition that the Secretary of State was not satisfied in the relevant respect, with the different proposition that she had found that she could not be so satisfied.
38. Mr Jarvis referred to paragraph 37 of the Reasons for Refusal Letter in which it was said the appellant expressed a wish that the Secretary of State should not contact his family. The Secretary of State took a view on the appellant's best interest for contact not to be made. Mr Jarvis submitted that the grant of leave was not a concession that no suitable reception arrangements existed for the appellant.

39. Mr Jarvis submitted that the judge rejected the appellant's claim as to why he fled Egypt. This meant that there was no reason for him to leave Egypt and no reason why he cannot contact his family again. The conclusion that can be drawn is that the appellant has family in Egypt, he knows where they live. At paragraph 44 the judge rejected the appellant's evidence that he had no contact with his family.
40. Mr Jarvis submitted that Ms Moffatt's submission almost amounted to saying that a child's evidence cannot be considered as implausible. He relied on the decision in **Y [2006] EWCA Civ 1223** where it was held by the Court of Appeal that "an Adjudicator is not required to take at face value an account of facts proffered by an appellant, no matter how contrary to common sense an experience of human behaviour the account may be. The decision maker is not expected to suspend his own judgment. In appropriate cases, an Adjudicator is entitled to find that an account of events is so far-fetched and contrary to reason as to be incapable of belief."
41. Mr Jarvis relied on this finding to submit that the judge set the appellant's claim in the context of his own internal history and made appropriate findings. There was nothing erroneous in the judge's approach to the plausibility of the claim.

Findings

42. I find that the judge did not err in law in his decision.
43. I find that the Secretary of State's reference to reception arrangements in Iran and not Egypt in the Reasons for Refusal Letter is not a material error. This is because it can be ascertained throughout the Reasons for Refusal Letter and the decision notice that the Secretary of State was aware that the appellant was a national of Egypt.
44. In any event with regard to tracing the appellant's family, I note that at paragraph 37 of the Reasons for Refusal Letter that the appellant expressed a wish that he did not want the Home Office to try to trace his family because he believed that it would put his mother's and sibling's lives in danger. It would appear that in the light of the appellant's expressed wish, the Home Office did not attempt to trace his family even though they had all the information available to them to do so. This does not mean however that the judge should have accepted that because of the Home Office's concession that there were no reception facilities available to the appellant in Egypt, and therefore he qualified for discretionary leave to remain, that the appellant qualified for asylum or humanitarian protection. The appellant's complaint that the judge failed to allow his appeal on this issue was rejected by the Court of Appeal in **DS (Afghanistan)**, paragraph 69.

45. Further, I find that the judge was not also required to accept that the appellant has no family to return to in Egypt. It was held in Y (paragraph 26) that an Adjudicator is not required to take at face value an account of facts proffered by an appellant no matter how contrary to common sense and experience of human behaviour the account may be. I find that the judge made a valid finding at paragraph 44 that the appellant has not even made any attempt to locate a charity here such as the Red Cross, to see the steps that they would take to obtain information. These are professional organisations, that are very sensitive in dealing with fact-finding issues and it is reasonable to conclude that they would have all these factors in mind about the appellant's family being at risk following the investigation, if that was the case. The judge went on to make a sustainable finding that no credible evidence was given that his mother and family's lives would be in danger by the Home Office doing so.
46. I find no error of law in the judge's approach to the plausibility of the appellant's account. The judge set the appellant's claim in the context of his own internal history. As held in Y by the Court of Appeal a decision maker is not expected to suspend his own judgment. In appropriate cases he is entitled to find that an account of events is so far-fetched and contrary to reason as to be incapable of belief. I find that this is exactly the case here. We are dealing with an appellant who claims to have left Egypt at the age of 13, being required to pay a debt owed by his father who had died two years before, claiming to have persuaded a people smuggler to take him out of the country a day after he claimed five armed men came to the family's home on the promise that he would repay the fee of the people smuggler once he reached Europe. In the context of the appellant's claim I find that the judge made findings that were open to him.
47. Indeed, the expert evidence which the judge relied on indicated that the appellant would not be at any immediate risk upon his return to Egypt from the Egyptian authorities and that failed asylum seekers are not subject to much interest to the authorities even when they have left the country illegally. The kind of people who could have problems on return at the border the expert said were those thought to be connected with the Muslim Brotherhood or another opposition group as well as those suspected or wanted criminals and draft dodgers. On the evidence the judge was entitled to find that the appellant does not fit into any of these categories.

Notice of Decision

48. I find that the judge's decision does not disclose an error of law. The judge's decision dismissing the appellant's appeal shall stand.
49. No anonymity direction is made.

Signed

Date: 28 September 2018

Deputy Upper Tribunal Judge Eshun

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date: 28 September 2018

Deputy Upper Tribunal Judge Eshun