



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

Appeal Number: PA/04128/2017

THE IMMIGRATION ACTS

Heard at Bradford

Decision & Reasons Promulgated

On 8 June 2018

On 21 June 2018

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

ISLAM [M]

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Farrell (Counsel)

For the Respondent: Mrs R Pettersen (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the claimant's appeal to the Upper Tribunal from a decision of the First-tier Tribunal (the tribunal) which it made on 5 June 2017, whereupon it dismissed his appeal against the Secretary of State's decision of 13 April 2017 to refuse to grant him international protection.

2. A pivotal component of the account relied upon by the claimant was his assertion that he had attended an oppositionist political demonstration on 1 August 2014 whilst in Egypt (the country of his nationality), with the consequence that he had been arrested by the authorities and subsequently detained and ill-treated by them and that he would now be persecuted by those same authorities if he had to return to Egypt.

3. On the face of it, given the above, it was necessary for the tribunal to make a finding as to whether or not the claimant had attended that demonstration. This is what the tribunal said:

“The appellant's evidence is that he had never participated in a demonstration before the one on 1 August 2014. He claims on the one hand that he was told the demonstration would be peaceful and on the other that he knew he risked being detained, ‘but I took on this risk for the benefit of my country’ (paragraph 2, page 20 in the appellant's bundle). The appellant was living in Qatar and he was not in touch with events in Egypt. Thus, he was unaware of the number of protests organised (Q24 Asylum Interview). In the circumstances, I find that, when the appellant was on holiday with his family, his explanation for attending a demonstration when he knew there was a risk of detention was imprudent or even reckless.”

4. An action can be imprudent or reckless but I do not see how an explanation can be. But an explanation can be implausible or incredible. I suspect that the tribunal intended to say that it thought the claimant's proffered explanation for attending the demonstration was implausible or incredible. But, to an extent, that is speculation on my part. The tribunal said what it said. So, it is not wholly clear as to whether it was finding that he did not attend the demonstration at all or whether it was finding that he did attend the demonstration but that he was being reckless in doing so. It is perhaps more likely to be the former than the latter given that the tribunal had no need to decide whether the claimant was acting imprudently or recklessly. But I cannot be certain.

5. Permission to appeal having been granted to the claimant, the matter was listed before me, for an oral hearing, so that it could be considered whether or not the tribunal had erred in law. Mrs Pettersen accepted that there was uncertainty about the tribunal's intended findings with respect to the above key consideration. She suggested, and unsurprisingly Mr Farrell did not disagree, that remittal would be the appropriate course. I am grateful to both representatives for their sensible approach.

6. In the circumstances I have decided to set aside the tribunal's decision on account of its failure to make a clear finding regarding an axiomatic aspect of the claimant's account. It does seem to me that matters ought, therefore, to be considered entirely afresh and I agree that remittal is the appropriate course.

7. Finally, I have issued some directions which will hopefully be of some assistance with respect to the remitted hearing.

Directions for the rehearing

1. Nothing shall be preserved from the decision of the tribunal of 5 June 2017.

2. The rehearing shall take place before any judge of the First-tier Tribunal other than the Judge who had decided the appeal on 5 June 2017.
3. The time estimate for the rehearing shall be three hours. At the rehearing the claimant is to be supplied with an Arabic speaking interpreter.
4. These directions may be amended, supplemented or replaced at any time by any Salaried Judge of the First-tier Tribunal in the Immigration and Asylum Chamber.

Decision

The decision of the First-tier Tribunal which it made on 5 June 2017 involved the making of an error of law and is set aside.

There shall, in consequence, be a rehearing of the appeal in the First-tier Tribunal.

No anonymity direction is made. None was made by the First-tier Tribunal and none was sought before me, on behalf of the claimant, by his representative.

Signed: Date: 19 June 2018

Upper Tribunal Judge Hemingway

**TO THE RESPONDENT
FEE AWARD**

Since no fee is payable there can be no fee award.

Signed: Date: 19 June 2018

Upper Tribunal Judge Hemingway