



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09688/2017

THE IMMIGRATION ACTS

Heard at Manchester
On July 27, 2018

Decision & Reasons Promulgated
On September 11, 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

[H O]

~~(NO ANONYMITY DIRECTION MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Mensah, Counsel, instructed by AJO Solicitors
For the Respondent: Mr Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. No anonymity direction is made.
2. The appellant is a national of Egypt and on September 30, 2016 the appellant entered the United Kingdom as a Tier 4 (General) Student. On May 24, 2017 the appellant claimed asylum. The respondent refused his claim for protection under paragraphs 336 and 339F of HC 395 and September 13, 2017.

3. The appellant lodged grounds of appeal on September 29, 2017 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002.
4. His appeal came before Judge of the First-tier Tribunal Birrell (hereinafter called “the Judge”) on March 14, 2018 and she dismissed the appellant’s appeal on protection and human rights grounds on March 20, 2018.
5. The appellant appealed this decision on April 4, 2018 on the grounds that the Judge had erred by failing to apply anxious scrutiny to the country material provided in respect of a Mr Sanad. Whilst he was initially released after a few days detention he was subsequently rearrested and sentenced to 3 years imprisonment. If the appellant had been put on notice the Judge was going to play such weight on the initial treatment of Mr Sanad then the appellant would have sought to file further evidence about his treatment in detention. The grounds submitted that his detention breached article 3 ECHR.
6. Permission to appeal was granted by Judge of the First-tier Tribunal Scott Baker on April 19, 2018 who accepted there was an arguable error of law on the basis:
 - (a) Her reasoning on the conflict in background material was inadequate.
 - (b) The Judge did not consider the conditions in detention.
 - (c) The Judge failed to consider what would happen to the appellant when he returned in light of the fact he would be required to complete military service.
 - (d) There had been no consideration of the appellant’s claim through the prism of political opinion be that actual or imputed.

PRELIMINARY ISSUES

7. At the hearing I was provided with a skeleton argument by Ms Mensah and I agreed to take into account her “Stage 1” submissions for the purposes of the error in law.
8. Mr Tan confirmed there had been no Rule 24 response filed in this appeal.

SUBMISSIONS

9. Ms Mensah adopted the content of her skeleton argument and invited the Tribunal to firstly find an error in law and secondly to allow the appeal on protection and human rights grounds. She stated that the appellant was morally opposed to military service because the military killed political opponents and protected high ranking individuals and people conscripted to it were sacrificed during assassination attempts and terrorist attacks. He would be viewed as an opponent of the government and having avoided that she submitted he would be detained, tortured, convicted and ordered to serve a custodial sentence. The Judge had found both the appellant and his sister to be honest witnesses and she accepted that one of the appellant’s reasons for opposing military service was because it contradicted his beliefs as a pacifist. The Judge accepted he would not be exempt from military service on the basis he was a conscious objector per se. Ms Mensah submitted that the appellant’s views amounted to criticisms of the

government and the military who were one of the same and she submitted that they were responsible for human rights abuses.

10. Whilst the Judge considered what happened to people who have evaded military service she submitted that the Judges assessment of what was likely to happen to the appellant was inadequate in that her examination of the background material did not take into account all of the documents that had been submitted in the appellant's bundle. In particular, there was commencing at page 135 of the appellant's bundle a Human Rights Watch Report 2017 in which there was evidence that the appellant would be treated as a political agitator. She submitted there was considerable material within the appellant's bundle that demonstrated conscientious objectors were dealt with harshly and in considering the risk faced by the appellant she submitted the Judge had not had regard to sufficient material but had limited herself to the latest CPIN report.
11. Ms Mensah emphasised that the military courts would not provide the appellant with a fair trial and he would be the subject of ill-treatment.
12. Mr Tan invited the Tribunal to uphold the Judge's decision and submitted that the Judge had had regard to the evidence and had distinguished the appellant from Mr Sanad on the basis that their profiles were totally different. He submitted that whilst it was being suggested Mr Sanad had been imprisoned for two years there was nothing before the Judge to confirm this. The fact a report suggested he may have been imprisoned did not mean that he actually was imprisoned because quite often those sentenced were released almost immediately. With regard to his activities on Facebook the Judge noted that whilst there were a number of postings they were in the main private and untranslated and they were simply an attempt to bolster his claim.

FINDINGS

13. Permission to appeal had been given in this matter because the Judge accepted it was arguable there were failings in the assessment of the background material. I took detailed submissions from Ms Mensah who referred me, at length, to various articles in the appellant's bundle and the thrust of her submissions were that in deciding what awaited the appellant and whether the appellant would have a fair trial as a conscientious objector or be subject to ill-treatment she did not consider all the material that was before her.
14. The Judge's record of proceedings records that Ms Mensah referred the Judge to the following documents:
 - (i) Page 201 of the appellant's bundle which was an article from the Guardian newspaper dated October 21, 2017.
 - (ii) Page 204 of the appellant's bundle which was a Guardian article dated February 9, 2018.
 - (iii) Page 182 of the appellant's bundle which was an article entitled, "Freedom for Maikel Nabil Sanad" dated April 11, 2011.

- (iv) Page 161 of the appellant's bundle which referenced CPIN Report dated March 2017.
15. In her oral submissions today, Ms Mensah also drew the Tribunal's attention to the Human Rights Watch Report which could be found between pages 135 and 145 of the appellant's bundle.
 16. The Judge approached the appeal from the starting point that the appellant was likely to be required to undertake military service although she noted at paragraph 9.3.9 of the CPIN report (see page 161 onwards of the appellant's bundle) that some members of a conscientious objector group had been granted exemptions although she noted that these were few in number. The Judge noted that the punishment for avoiding military service was unclear although in general a fine was the most likely punishment. She did not accept that a requirement to undertake military service amounted to persecution or engaged article 3 ECHR.
 17. Ms Mensah drew my attention to the Human Rights Watch Report and referred to the fact that the criminal court had taken action against five people who had founded or led prominent human rights groups and she stated that people had been banned from travelling outside Egypt. Article 78 of the Penal Code had been amended to allow for sentences of up to 25 years if a Judge determined that an NGO worker received foreign funding for pursuing acts harmful to national interests.
 18. I struggle to find how that sanction affected the appeal before the Judge because the Judge did not accept the appellant had any particular profile and in particular concluded at paragraph 67 that there was nothing about his activities in Egypt that would draw him to the attention of the authorities.
 19. The article on page 136 of the bundle was highlighted by Ms Mensah but again I failed to see why this article would have assisted the Judge in determining the issues that she had to deal with.
 20. The Judge considered the CPIN (March 2017) and in particular paragraph 9.3 of that document. It seemed common ground that there was some confusion/conflict in how the authorities treated people who were conscientious objectors and in particular how many people evaded service and how many ended up in prison for it. The penalty for not completing military service appeared to be a fine of EGP1,000 and/or a prison sentence of at least one year.
 21. The Judge, at paragraph 59 of her decision, accepted the appellant would refuse to do military service and noted the potential penalty available to the court. Ms Mensah accepted, both before the Judge and myself, that the picture was not clear and the Judge considered material that was before her before finding he would not be at risk as a conscientious objector if he was returned.
 22. The Judge considered his account and distinguished his situation from Mr Sanad who she noted had a very clear public profile and was a well-known blogger. She referred to the fact that an article, contained within the appellant's bundle, indicated that this

person was released after two days imprisonment but Ms Mensah submits that this failed to take into account the article contained on page 182 of the appellant's bundle that suggested that he had been sentenced to 3 years imprisonment and this was after he had been released on medical grounds. According to the grounds of appeal that sentence was initially reduced by the Egyptian Supreme Court on December 14, 2011 (eight months after his sentence) that he was eventually pardoned by the military ruling council on January 23, 2012.

23. Whilst the Judge made no reference to this document it is perhaps important to note that a well-known conscientious objector was pardoned. Ms Mensah's submission was that the military court would not give the appellant a fair hearing but even in the case of Mr Sanad he was released and whilst he may have spent a period in custody it cannot be overlooked that he was pardoned. I am asked to accept by Ms Mensah that the appellant would be at risk of a sentence as a conscientious objector and that due to conditions in prison his human rights would also be breached. The material submitted to the Judge did not support that contention. The Judge considered various documents and ultimately concluded there was nothing which would draw him to the attention of the authorities. At paragraph 67 of her decision the Judge summarised her position.
24. Ms Mensah indirectly referred to new material that was now available which may strengthen her argument but in deciding whether there has been an error in law I have to consider whether based on the material presented to the Judge she reached a finding that was not open to her.
25. Much of what Ms Mensah asked me to take into account in her submissions primarily related to someone with a high profile which the Judge concluded this appellant did not have. The background material does not support a general contention that conscientious objectors will be imprisoned and therefore face persecution or serious harm through the conditions they face. One of the articles referred to by Ms Mensah (pages 174-175) is from April 2016 and there was a lack of articles, within the bundle, which dealt with the position as at today.
26. I therefore find that based on the evidence that was submitted to the Judge she did not make an error.

DECISION

27. There is no error in law and I uphold the decision.

Signed

Date 27/07/2018



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I make no fee award as none was made in the First-tier Tribunal.

Signed

Date 27/07/2018

A handwritten signature in black ink, appearing to read "SPALIS". The signature is written in a cursive style with a long horizontal stroke at the end.

Deputy Upper Tribunal Judge Alis