



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: PA/13137/2017**

THE IMMIGRATION ACTS

**Heard at Field House
On November 30, 2018**

**Decision & Reasons
Promulgated
On December 7, 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**[M A]
(ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Smith, Counsel, instructed by Turpin and Miller

For the Respondent: Ms Kenny, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Egypt who claimed to have arrived in the United Kingdom on February 10, 2016 and claimed asylum on April 20, 2016. The respondent refused his application under paragraphs 336 and 339M HC 395 on November 28, 2017.
2. The appellant lodged an appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002 on December 12, 2017 and his appeal came before Judge of the First-tier Tribunal Farmer on September 6, 2018.

In a decision promulgated on September 12, 2018 the Judge dismissed the appellant's claims.

3. The appellant appealed that decision on September 25, 2018. Permission to appeal was granted by Judge of the First-tier Tribunal O'Brien on October 5, 2018. In giving permission the Judge concluded it was arguable the Judge had erred by failing to take into account the appellant's activities as an atheist in the United Kingdom and such evidence was material to the assessment of whether the appellant would live discreetly as an atheist on return.
4. In a letter dated November 19, 2018, the respondent accepted there had been an error in law and invited the Tribunal to determine the appeal by considering if the appellant's sur place activities were accepted whether they would place the appellant at risk, if he was returned to Egypt.
5. Ms Kenny accepted there was an error in law and the issue was (a) whether the appellant would have been at risk on return to Egypt because he was now an atheist and (b) how he would have behaved on return applying the principles of HJ (Iran) v SSHD [2010] UKSC 31 and RT (Zimbabwe) v SSHD [2012] UKSC 38.
6. Ms Smith was content to conclude the remaking of the decision at this hearing.

Direction Regarding Anonymity - rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

7. 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.

SUBMISSIONS

8. Ms Kenny submitted that whilst there was evidence that atheists in Egypt were discriminated against, she submitted that it was not illegal to be an atheist and there was insufficient evidence to support the appellant's claim that returning him would lead to him being persecuted or face serious harm. It was important to note that whilst the Judge had erred in the First-tier Tribunal by failing to consider the risk as an atheist the remainder of the Judge's decision had not been challenged and those findings should stand. Whilst she accepted there was evidence that he was attending demonstrations and posting on social media she submitted there was no reason to believe he would live openly on his return and consequently there was no basis to allow his appeal.
9. Ms Smith submitted that there was ample evidence in the appellant's

bundle that people were being prosecuted under the blasphemy law. She referred to a number of articles in the appellant's bundle that showed atheists had been arrested, prosecuted, convicted and thereafter imprisoned under the blasphemy laws. If people were prosecuted for their religious beliefs, then the appellant would be at risk of persecution/serious harm on return. The appellant wished to live openly as an atheist and in doing so would be at risk of persecution.

FINDINGS

10. When this appeal came before the First-tier Tribunal, the Judge recorded that the respondent accepted that the appellant had converted from Sunni Muslim to atheist. At paragraph 19 of the Judge's decision, the Judge accepted the appellant's evidence that he was an atheist but found the appellant, in all other respects, lacked credibility.
11. The issue that I have to consider is not about what happened in Egypt before the appellant came to the United Kingdom in 2016 but whether atheists, per se, face a risk of persecution in Egypt, or is it simply certain atheists who face a risk, and if being an active atheist would place the appellant at risk.
12. If, as Ms Smith argues, atheists are at risk generally then it would matter little whether the appellant intended to openly live as an atheist or not. The principles set out in HJ (Iran) would apply and the appellant would succeed in his protection claim.
13. The decision letter dated November 28, 2017 did not properly address this issue. Paragraph 37 of the decision letter referred to the Country Policy and Information Note, Egypt: Christians (July 2017) but merely stated that as he had failed to demonstrate he had been targeted by the authorities for being an ex-Muslim atheist or that he had been accused or charged under any blasphemy law cast doubt on the credibility of his claim. It was never the appellant's claim that he had been an open atheist in Egypt. The appellant had claimed that he had been harassed and threatened in Egypt because he criticised Islamic history and Islamic beliefs, but this aspect of the claim was rejected by the Judge and is not something that has been appealed by the appellant.
14. In his interview he stated that whilst he believed in atheism when he was in Egypt he ensured that he was not identified as an ex-Muslim atheist in Egypt and it is only after he came to the United Kingdom that he was encouraged to be more open and to reveal his atheism to others.
15. His case is that he has increased his knowledge and understanding of atheism and humanism by joining in attending many events and meetings with the Council of Ex-Muslims in Britain, the National Secular Society, Harrow Humanists and Humanists UK. He has also posted articles on Facebook, Twitter and published documents on Word Press. He provided letters of support confirming his involvement with the various groups and

at the First-tier Tribunal two witnesses from humanist organisations attended and gave oral evidence on his behalf. Since the last hearing the appellant has adduced further documents and photographs indicating that he has continued to write blogs and post photographs on social media as well as attend further meetings.

16. Taking the evidence, including the evidence from the two witnesses who also attended this hearing but were not required to give evidence by this Tribunal, I am satisfied that the appellant is an enthusiastic supporter of atheism and has projected himself in a very public way and is likely to continue to do so in the future. I do not propose to set out each document which supports this conclusion as they are self-evident in the appellant's bundle of documents.
17. The issue in my opinion is whether this appellant would now be at risk of persecution because of his religious belief.
18. Paragraph 5.3.2 of the aforementioned Country Report states, "The Egyptian website Mada Masr referred to criticism of Egypt's blasphemy laws by Human Rights Watch, which noted that they curtail freedom of expression, which is guaranteed by the Egyptian Constitution. Mada Masr stated that blasphemy laws are used against everyone, including Shia Muslims, atheists, Copts, and in some cases, Sunni Muslims."
19. The United State Department Country Report on Human Rights 2015 reported that local and international rights groups had reported increased charges under the blasphemy law, primarily targeting Christians but also atheists.
20. The appellant's bundle contained a number of articles between pages 52 and 173 that described religious crackdowns and prosecutions in Egypt.
21. A report in Egypt Today dated July 10, 2018 reported that Egypt had the highest number of atheists in the Middle East but this only stood at 866 out of a population of 87 million citizens although the report suggested that it was hard to determine the actual percentage of atheists since many of them feared that if they declared their belief their life would be in danger. This figure is brought into question by other documents that suggest atheists could form as much as 10 million of the population.
22. On January 4, 2018 the Parliament Committee on religion produced an explanatory note on the draft law to criminalise atheism in Egypt. Ms Smith accepted that no law had been brought into force but she argued it was indicative of how the authorities felt about atheism but I note the US Commission on International Religious Freedom 2018 Report stated that this bill had failed. Atheism is therefore not a criminal offence.
23. The same report reported that between 2011 and 2013, 27 people had been convicted of declaring themselves as atheists and in November 2014 a 21-year-old student was sentenced to 3 years in prison for announcing on Facebook that he was an atheist. Recently, the Egyptian security forces

arrested a 29-year-old student for administering a Facebook page promoting atheism (see below for further details).

24. The US Department of State '2017 Report on International Religious Freedom: Egypt' issued on May 29, 2018, placed the number of atheists in Egypt anywhere between 1 million and 10 million people. On August 21, National Security Service (NSS) officials arrested two atheists after their manager at La Poire, a pastry shop in New Cairo, notified authorities of a private message passed between the two that was critical of religion. The officials beat the two arrestees, according to sources familiar with the case, and then told inmates to beat them further. On December 23, NSS officers arrested a 29-year-old man on charges of denigration of religions for allegedly administering a Facebook page entitled "Al Mulhedeen" ("The Atheists") with more than 34,000 followers, according to press reports. The page, which allegedly questioned some Quranic verses and promoted the "Big Bang" theory of the origin of the universe, was no longer available after the arrest. North Giza Court subsequently ordered the man detained for 15 days pending investigation.
25. An article dated May 4, 2018 from the International Humanist and Ethical Union described how the author of a YouTube channel, Sherif Gaber, had discussed numerous on his YouTube channel including atheism. On March 31, 2018 he had tweeted that a new case had been raised against him in connection with his ongoing atheist advocacy. He described how the police detained him for a period of time although he was subsequently released. In February 2015 he had been sentenced to one year in prison with hard labour for "professed atheism" and insulting Islam as well as defending homosexuality.
26. Article 98(f) of the Egyptian penal code prohibits citizens from "ridiculing or insulting heavenly religions or inciting sectarian strife." Authorities have used this law to detain, prosecute, and imprison members of religious groups whose practices deviate from mainstream Islamic beliefs or whose activities are alleged to jeopardize "communal harmony" or insult Judaism, Christianity, or Islam. It is this legislation that Ms Smith argues would place the appellant at risk of prosecution.
27. The 2017/2018 Amnesty International Report dated February 22, 2018 referred to criminal charges being brought against people who defamed the Islamic religion but cited no examples of any prosecutions for being an atheist.
28. The DFAT Country Information Report-Egypt May 2017-confirmed that there was no legal statute preventing atheism in Egypt although the State had previously opposed the practice of the religion. DFAT assessed that proclaimed atheists faced a high risk of official discrimination because vilification by government officials leaves them vulnerable to arrest (under Article 98) or public vigilantism. DFAT assessed that proclaimed atheists face a moderate level of societal discrimination, although this is dependent on individual and socio-economic circumstances.

29. The Christian Solidarity Worldwide Freedom of Religion Report, February 2017, reiterated that despite the standards set out in international covenants regarding freedom of expression, those professing atheism in Egypt are afforded little or no legal protection. Instead they are actively targeted by the authorities and by society.
30. The Freedom of Thought Report 2015 reported that atheists were one of Egypt's least protected minorities and that there was a campaign to turn the youth away from atheism with several prominent atheists arrested and convicted. Whilst Article 64 of the constitution states that freedom of belief is absolute the report suggests that the freedom to practice that religion was limited.
31. Looking collectively at these articles the picture in Egypt is far from clear. Under Article 64 of the constitution there is freedom of belief but the authorities appear, in some cases, to have prosecuted individuals under the blasphemy laws.
32. The bundle of documents provided by the appellant was considerable, but they did not appear to highlight a policy of prosecution simply for being an atheist. There is evidence of discrimination and I accept evidence of a few people being prosecuted for what they have either spoken or written.
33. Ms Smith argues that all atheists are at risk but that is not borne out by the articles that I have looked at in the appellant's bundle. There have been some prosecutions and assuming the appellant intends to be open about his religion in Egypt I have to consider whether that is reasonably likely to place him at risk of persecution or serious harm from the authorities. At the hearing he handed up recent blogs he had written but these blogs do not attack Islam as such.
34. Reports of prosecutions in the appellant's bundle are limited and those who have been prosecuted appear to have spoken out against Islam and not simply spoken out in support of atheism.
35. I was provided with limited evidence of his Facebook and Twitter social media accounts and what I was provided with did not specifically criticise Islam. A report from the Evening Standard complained about "Islamophobic" banners at London Pride in July 2017 (which the appellant can be seen attending) with concerns raised that protesters were inciting hatred against Muslims on absolutely groundless reasons. Contained within the bundle was evidence from the Council of Ex-Muslims of Britain who supported the appellant's appeal and stated that he had joined their events and protests.
36. Whilst some people have been prosecuted, I find they appear to have been prosecuted because of their stance over Islam and not simply because they were atheists.

37. I accept it is reasonably likely that atheists do suffer discrimination, but discrimination is not the same as persecution.
38. Dealing specifically with this appellant I am satisfied that although he is an active atheist and someone who would be a reasonably likely to continue to write blogs and use social media to support atheism there is insufficient evidence to support Ms Smith's submission that the Egyptian authorities has a policy of persecution against atheists or that he would be at risk of persecution because of his religious beliefs.

Notice of Decision

39. There was an error in law and I set aside the protection decision.
40. I have remade that decision and I dismiss the protection claim.
41. In all other respects the First-tier Tribunal decision is upheld.

Signed

Date 04/12/2018



Deputy Upper Tribunal Judge Alis

**FEE AWARD
TO THE RESPONDENT**

I do not make a fee award as I have dismissed the appeal

Signed

Date 04/12/2018



Deputy Upper Tribunal Judge Alis