



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

Appeal Number: PA/01598/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 21 January 2019**

**Decision & Reasons
Promulgated
On 06 February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

**S S M S A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A. Nizami, Counsel.

For the Respondent: Mr C. Howells, Home Office Presenting Officer.

DECISION AND REASONS

1. The Appellant is a citizen of Egypt. He sought international protection. His application was refused and following a hearing Judge of the First-tier Tribunal Wright, in a decision promulgated on 12 November 2018, dismissed the Appellant's appeal. The Judge found his account not credible.
2. The Appellant sought permission to appeal which was granted by Judge of the First-tier Tribunal Ford on 5 December 2018. Her reasons for so granting were: -

“1. The Appellant seeks permission to appeal in time, against a decision of First-tier Tribunal (Judge Wright) dated 12 November 2018 whereby it dismissed the Appellant’s appeal against the Secretary of State’s decision to refuse his Protection claim.

2. It is argued that the Tribunal erred in; -

a. Failing to make due allowance for the impact of the Appellant’s PTSD on his recollection of events including a visit to the Appellant’s family home by the authorities after he had fled Egypt. Grounds 2 and 3 are closely linked to Ground 1.

b. Failing to give adequate reasons for the adverse credibility findings and/or failing to make findings on important issues.

c. Wrongly requiring documentary corroboration of his account of his brothers being in hiding (paragraph 37 and 62).

3. Only Ground 6 in the application is arguable.

4. When looked at as a whole the Tribunal has given due weight to the Appellant’s medical report and PTSD diagnosis in assessing the evidence and has done an adequate assessment of the evidence giving sufficiently clear and cogent reasons for its findings.

5. It is just about arguable that the Tribunal made an arguable material error of law.”

3. Thus, the appeal came before me today.

4. This is an appeal where I find the Judge has materially erred for the reasons put forward in the first three of Counsel’s grounds seeking permission to appeal. They effectively amount to one singular ground which is that the Judge in the First-tier Tribunal failed to give proper regard to the Medico-legal report and consequently misdirected herself in law.

5. This was resisted by Mr Howells who submitted that the Judge had found the Appellant, at paragraph 54 of her decision, suffered from both PTSD and mild depression and that it was open to the Judge, irrespective of that, to find that such a diagnosis did not explain the fact that the Appellant had given new evidence in cross-examination. Further that it was open to the Judge to find that it was “not accepted that the Appellant would suddenly “remember” such information during cross-examination”. Further given that the Judge was not provided with an application to consider the Appellant a vulnerable witness there was no onus upon the Judge to do so. The Judge had come to findings and conclusions on the evidence which were open to be made.

6. In considering the Appellant’s evidence the Judge has failed to consider, albeit that it is acknowledged that the Appellant has mental health

difficulties, the medical legal report of Dr Michael Shortt dated 26 March 2018. It is recorded at page 42 thereof that: -

"(...) episodes of repeated reliving of the trauma in intrusive memories ("flashbacks") or dreams, occurring against the persisting background of a sense of "numbness" and emotional blunting, detachment from other people, unresponsiveness to surroundings, anhedonia, and avoidance of activities and situations reminiscent of the trauma. Commonly there is fear and avoidance of cues that remind the sufferer of the original trauma. Rarely, there may be dramatic, acute bursts of fear, panic or aggression, triggered by stimuli arousing a sudden recollection and/or re-enactment of the trauma or of the original reaction to it."

7. At paragraph 23 of her decision the Judge records, in relation to the Medico-legal report, that "there was however no reference to the report by the Appellant in his evidence in chief. In addition, the report was barely referred to in closing submissions.". This again gives rise to a material error of law. The submissions that were made at the hearing relied heavily on Counsel's written skeleton argument wherein there are several references to this evidence.
8. Whilst the Appellant's representatives accept that the Appellant did not disclose certain issues prior to the appeal hearing, in particular that the Egyptian authorities visited his family home after he fled his country of origin, such late disclosure is possible in the context of an appeal hearing. This is particularly so in the context of an unwell Appellant who gave evidence in cross-examination in relation to his mental ill-health and which was supported by the above-mentioned Medico-legal report.
9. Accordingly, I find that the Judge has failed to consider material matters that were before her, erred in finding that the report was barely relied on and erred in her credibility assessment with particular reference to the late evidence.
10. For these reasons I find that the Judge's credibility findings are materially flawed and cannot stand. There is therefore no need for me to consider further any of the other grounds put forward.

Notice of Decision

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Direction 7(b) before any Judge aside from Judge Wright.

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 their 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 4 February 2019.

Deputy Upper Tribunal Judge Appleyard