



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02433/2016

THE IMMIGRATION ACTS

Heard at Field House
On 10th May 2019

Decision & Reasons Promulgated
On 5th June 2019

Before

UPPER TRIBUNAL JUDGE COKER

Between

MM
(anonymity direction made)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Profumo, instructed by Paragon Law
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant in this determination identified as MM. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. This appeal comes before me following the grant of permission by First-tier Tribunal Judge Pullig on 9th August 2018 against the decision of First-tier Tribunal Judge Obhi who dismissed the appellant's appeal on protection and human rights grounds for reasons set out in a decision promulgated on 13th July 2013.

Immigration background

2. The appellant is an Egyptian national, born in January 1999. He claims he left Egypt on 14th or 15th April 2015, eventually arriving in the UK on 13th June 2015 whereupon he claimed asylum. His claim was refused for reasons set out in a decision dated 25th January 2016 and his appeal came before a First-tier Tribunal judge on 26th January 2017 who dismissed it. That decision was set aside by the Upper Tribunal and the appeal remitted to the First-tier Tribunal for fresh hearing, no findings preserved. It was thus heard by judge Obhi on 22nd June 2018 and it is her decision which is the subject of the appeal before me.
3. The grounds upon which permission was granted are succinctly summarised by Judge Pullig:
 - (i) It is arguable that the judge's approach to the appellant's claimed vulnerability, including the approach to medical issues, was flawed and this affected the judge's approach to the appellant's credibility.
 - (ii) It is arguable the judge failed to take account of evidence relating to the appellant's account of how he had lost contact with his mother, and this impacted upon the findings with regard to his mother.
 - (iii) It is arguable the judge failed to give reasons why she concluded that the appellant had not given good reasons for abandoning his Muslim faith; failed to address evidence to which she was specifically directed in connection with his loss of faith.
 - (iv) It is arguable the judge failed to make a finding on the appellant's Article 8 rights.

Error of law

4. The appellant had claimed to be younger than his assessed age by almost two years. The First-tier Tribunal judge found that his age was as assessed by social workers. That finding has not been challenged. The judge nevertheless took the view in her assessment of the evidence that the appellant was a minor at the time the events he referred to occurred and that the claims he made had to be considered in the light of his age at the time of those claimed events. There was no challenge to that approach by either party.
5. The First-tier Tribunal judge considered the two psychiatric reports prepared by Dr Kumar. She notes that the first report refers to the appellant having an "adjustment disorder" and having limited ability to speak English. She notes that Dr Kumar does not respond to the query whether the appellant is suffering from PTSD. In his second report, following reported serious episodes resulting in the

appellant being taken to hospital, Dr Kumar changes his diagnosis and concludes that the appellant is suffering from PTSD rather than “adjustment disorder”. Dr Kumar then saw the appellant again, by which time the appellant was using cannabis on a regular basis. The First-tier Judge states that there was no evidence of cognitive defect and, although Dr Kumar states that “on the balance of probabilities his mental health has deteriorated and his drink and drug habits would play a role in that deterioration”, concludes that the appellant is not vulnerable through mental illness but is vulnerable because of his age.

6. This is difficult to understand. Firstly, the First-tier Tribunal judge has not explained why she does not consider PTSD and a deteriorated mental health with nightmares and flashbacks to a claimed kidnapping does not render the appellant vulnerable because of mental health difficulties. Cognitive impairment is not equivalent to mental health illness and that the appellant is not suffering from cognitive impairment does not lead to a conclusion that he is not vulnerable because of mental health issues. Secondly the First-tier Tribunal judge does not explain how her consideration of the appellant’s vulnerability because of his age but not his mental health impacted upon her assessment of the appellant’s evidence. Mental health issues are not restricted to whether a person is able to give evidence or provide coherent evidence. the vulnerability that arises from mental health problems can impact on the evidence in a number of ways; the First-tier Tribunal judge has not considered this or if she has she has not identified how it has affected her findings.
7. The First-tier Tribunal judge found that the appellant had been kidnapped but does not accept that he was or is of interest to the Muslim Brotherhood. Neither of these findings is the subject of direct challenge by either party. The appellant does submit that the judge failed to make a clear finding on whether the appellant’s father was arrested or involved with the Muslim Brotherhood. The judge (paragraph 56, 59) considered the evidence before her including the background evidence. The finding reached by her that she did not accept that his father was involved with the Muslim Brotherhood or that the authorities or the Muslim Brotherhood would have any interest in the appellant was a finding that was open to her on the evidence before her. Her conclusions were drawn from evidence that would not have been impacted upon by the appellant’s mental health issues which, although she states she did not consider him to be vulnerable because of those issues, were in her mind during her consideration of the evidence as can be seen from her extensive recording of the evidence that was before her.
8. Later in her decision the First-tier Tribunal judge appears to accept that the appellant is suffering from mental health problems arising from having to leave his family and Egypt. She describes the incidents of violence and the involvement of the social worker who considers the appellant to be concerned about his family in Egypt. But she does not take this into account in reaching her findings on the appellant’s involvement with the Red Cross. Nor does she take this into account when assessing the appellant’s evidence with regard to his changing faith. That the appellant is vulnerable, has difficulty making friends, feels that he is not in control of his life has not impacted upon her conclusions as to his faith and claimed abandonment of Islam. She has only considered

these matters in terms of availability of treatment in Egypt – despite having earlier found that he was not vulnerable because of his mental state.

9. The First-tier Tribunal judge factored into her conclusions on the appellant's claimed change of faith, that this was as a consequence of needing emotional support. She did not consider the explanation given by the appellant that he was disillusioned with Islam through his understanding of the actions of his father and the Muslim Brotherhood. This evidence by the appellant impacts on whether his claimed conversion is 'opportunistic' or whether it has occurred because he was disillusioned and was looking for alternative faith, which also had the product of providing emotional and practical support. Although there has been no direct challenge to the finding that the appellant's father was not involved with the Muslim Brotherhood, the disillusionment with Islam stems, from the appellant's evidence, from other factors in addition to this; the judge has not taken this into account.
10. Nevertheless, although there are shortcomings and errors in the First-tier Tribunal decision, I am not satisfied that they amount to errors such as require the decision to be set aside to be remade. Taking the appellant's claim at its highest namely that he was kidnapped when he was about 7 years old, that his father was involved with the Muslim Brotherhood and was arrested, that he is unable to make contact with his family in Egypt and that he has left the Islamic faith and embraced another faith, the background evidence that was before the First-tier Tribunal judge, does not support the contention that as a family member of a Muslim Brotherhood member he would be sought either by the authorities or the Muslim Brotherhood; nor does it support the submission that he would be at risk of being persecuted either because he has left Islam or converted to Christianity (or Mormonism).
11. In consequence I am satisfied that although the judge did not approach the issue of the appellant's vulnerability correctly, that failure does not have a material impact on the core findings that the appellant is not at risk of being persecuted for a Convention reason (either imputed political opinion or religious affiliation) if removed to Egypt. There is no error of law such as to result in the setting aside of the decision for this reason.
12. Although the judge has not directly addressed Article 8, it is difficult to see on what basis the appellant would have a sustainable Article 8 claim in any event. Article 8 does not provide for leave to remain to be granted where a mental health case does not meet the high threshold of Article 3; nor does it provide for a general level of support in the UK. The appellant's evidence that he would be without familial support is a matter that ought to be considered but in this case, he will be returning as an adult, albeit with established vulnerability. Although there are medical facilities available in Egypt they may well not be of the same calibre as in the UK and he may not be able to access the social and emotional support networks that have been established here in the UK. But despite all these factors, the evidence before the First-tier Tribunal judge did not support a submission that there would be very significant obstacles to his reintegration into Egypt or that his mental health would deteriorate such as to meet the Article 3 threshold. Had the First-tier Tribunal judge addressed Article 8 she would inevitably have reached the conclusion that the decision to remove

the appellant as a failed asylum seeker was not disproportionate. There is no error of law such as to result in the setting aside of the decision for this reason.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

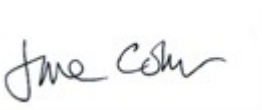
I do not set aside the decision; the decision of the First-tier Tribunal judge stands.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Date 3rd June 2019



Upper Tribunal Judge Coker