



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04262/2018

THE IMMIGRATION ACTS

Heard at Glasgow
On 26th April 2019

Decision & Reasons Promulgated
On 1st May 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

MR B Y Y I
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Winton, Counsel, instructed by Katani and Co
For the respondent: Mr M Mathews, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant made a claim for protection with his wife and their two children as dependents. The respondent accepts they are Egyptian and Coptic Christians.

2. The basis of the claim is that they are at risk from Islamic extremists because of their religion. This was particularly so as they have been involved with a voluntary group which sought to assist Christian women who had accepted Islam to marry to return to Christianity. The appellant referred to various incidents when his family were threatened and set out details of his appeals to the police for protection. His account of involvement and of threats made was not accepted. The respondent referred to the country guidance case of MS (Coptic Christians) Egypt CG [2013] UKUT 611 which identified particular risk categories. These included converts to Christianity; those involved in construction or reconstruction of churches and had been targeted and those accused of proselytising. The respondent took the view that the appellant did not fall into any of these categories.
3. His appeal was heard by first-tier Tribunal Judge Clough on 11 June 2018 in Glasgow. In a decision promulgated on 6 December 2018 his appeal was dismissed. The appellant and his wife appeared and adopted their statements. He produced an expert report in relation to documents he had submitted about reporting incidents to the police. The judge accepted the incidents had been reported. The judge referred to his wife's statement in which she explained about the voluntary group set up to help girls return to their Christian beliefs.
4. The judge set out the claimed incidents when threats were made. The judge then referred to MS (Coptic Christians) Egypt CG [2013] UKUT 611 and the particular risk categories identified. The judge referred to the decision setting out that these would not necessarily preclude a risk outside those categories.
5. Under the heading 'conclusions' the judge went through the risk categories. The appellant and his wife were not converts. The appellant was not involved in the construction or repair of churches. The judge then posed the question as to whether the appellant and his wife were proselytising. At paragraph 27 the judge stated:

“While the Appellant's wife noted in her statement the group started in 2010 there was no specific claim made by the Appellant that he and his family were targeted for this reason ... I do not accept being part of such a group was a reason for the appellant seeking asylum with his family or indeed that they were part of such a group ...”

The Upper Tribunal.

6. Permission to appeal was granted on the basis it was arguable the judge was mistaken in fact in stating the appellant and his wife had not claimed they were targeted because of their involvement in helping girls who were adopting Islam to return to Christianity. Reference was made to the appellant's statement of 24 May 2018 where at paragraph 10 he stated:

My problems in Egypt began on 30 January 2014. My wife answered the phone on this day... The speaker shouted and threatened her stating we will not leave you alone infidels, enough is enough and get out of our way and don't go to the church again. We will never leave you alone infidels, we are monitoring you and we know that you have been doing since you were in El-Fashan...

7. At hearing, both representatives were in agreement that the judge materially erred in this regard as there was evidence of specific claims the family were threatened for supporting conversion back to Christianity. A further example for instance is at question 33 of his substantive interview where he said they were attacked because not only of their religion but also the work they did with Christians who were contemplating marriage to a Muslim. If the underlying claim were true then the issue of relocation was still alive but there needed to be a proper factual finding on the preliminary claim. Both parties agree the matter should be remitted to the first-tier Tribunal for a de novo hearing.
8. I would agree that the decision is defective in the thrust of the claim was that the family's difficulties arose not only from their Christianity but also from their involvement with this organisation.
9. As the parties agree that this is a case where the decision of the First-tier tribunal must be set aside no further written reasons are required. The requirements of subparagraph 40(3)(a) and (b) of the rules are met. I therefore set aside the decision of the First-tier Tribunal.

Decision.

The decision of First-tier Tribunal Judge Clough materially errs in law and is set aside for a de novo hearing in the First-tier Tribunal.

Deputy Upper Tribunal Judge Farrelly
26th April 2019

Directions.

1. Relist for a de novo hearing in the First-tier Tribunal at Glasgow.
2. An Arabic interpreter should be organised preferably Middle Eastern.
3. Hearing time of around 2 ½ hours is anticipated.
4. Bundles should be updated as necessary.

Deputy Upper Tribunal Judge Farrelly
26 April 2019