



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

Appeal Number: PA/07248/2018

THE IMMIGRATION ACTS

**Heard at Bradford
On 2 January 2019**

**Decision & Reasons
Promulgated
On 24 January 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**AE
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Davison, Ison Harrison Solicitors

For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, AE, was born in 1992 and is a male citizen of Egypt. The appellant claimed asylum in the United Kingdom on 23 February 2017. By a decision dated 25 May 2018, the Secretary of State refused the appellant international protection. He appealed to the First-tier Tribunal (Judge T R Smith) which, in a decision promulgated on 25 July 2018, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. There are two grounds of appeal. The second addresses whether the appellant, whom the judge found had been arrested by the Egyptian authorities on three occasions, had been subjected to persecution. The grounds assert that the judge had failed to consider whether repeated raids on the appellant's home in Egypt and the threatening and detention of family members constituted a "sustainable systematic denial of core human rights" (*Ravichandran* [1996] Imm AR 97). I make no finding in respect of the second ground of appeal because (i) I intend to allow this appeal and set aside the decision having found that the first ground of appeal is made out and (ii) the entire account given by the appellant will be the subject of a *de novo* consideration. It will be for the First-tier Tribunal hearing the appeal *de novo* to determine whether or not, if it finds that the appellant and his family have suffered the treatment described in the appellant's account, suffered persecution or ill-treatment which would infringe Article 3 ECHR.
3. The first ground of appeal concerns a mistake as to the facts made by the judge. At [84], the judge recorded that "[the appellant] said that, having arrived in the United Kingdom on 8 February 2017 with the support of the British Council he intended to return to Egypt on 1 March but only decided to claim asylum after his father was arrested on or about 21 February 2017". The appellant's evidence had clearly been (in both statement and in interview) that his family home had been raided on 21 February 2017; the appellant's father had been arrested in November 2017. The grounds assert that at [87], the judge fell into error as a result of his misunderstanding of the evidence when he stated that "no information was given suggesting any form of ill-treatment to the appellant's father or that the security forces made any threats to the appellant in the presence of the appellant's father. No steps had been taken, for example, to persecute the appellant's family in order to try and persuade the appellant to return to Egypt". As the grounds point out, this finding "sits uncomfortably with the 'turning point' for the appellant that led to his claiming asylum", namely the raid on his home in February 2017. The judge fell into further error because he had misunderstood when the appellant's father had been arrested. At [88], the judge noted that there was a "clear evidential contradiction given that the email was written before the date of the appellant's father's arrest". The email in question was written by the appellant on 30 November 2017. In the email, the appellant stated that "my dad was arrested by the national security in Egypt last Friday". The appellant's evidence is consistent; the judge has found an "evidential contradiction" when none existed. The judge was also wrong at [93-94] when he "attached weight to the fact that until the appellant's father was arrested [the appellant] was content to return to Egypt". As had already been stated, the appellant's father's arrest took place in November 2017 some months after the appellant had made his claim for asylum (February 2017).
4. Mrs Pettersen, who appeared for the Secretary of State, did not dispute that the judge had made errors of fact in the decision. Her only submission was to draw attention to the finding by the judge at [96] that

the appellant was not of interest to the Egyptian authorities because he had been able to leave Egypt on his own passport. That submission and the judge's finding ignore the fact that the appellant has always claimed that the Egyptian authorities became interested in him after he had left Egypt. Given that circumstance, it was not surprising, therefore, that he had been able to leave Egypt using his own passport.

5. I find that the decision of the judge should be set aside. It is impossible to determine to what extent the judge's misunderstanding of the evidence has affected his analysis generally. It is necessary for there to be a new fact-finding exercise which is better conducted by the First-tier Tribunal.

Notice of Decision

6. The decision of the First-tier Tribunal which was promulgated on 25 July 2018 is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal (not Judge T R Smith) for that Tribunal to re-make the decision.

7. An anonymity direction is made.

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 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.

Signed

Date 1 January 2019

Upper Tribunal Judge Lane

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 1 January 2019

Upper Tribunal Judge Lane