



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

Appeal Number: PA/08264/2017

THE IMMIGRATION ACTS

**Heard at Cardiff Civil Justice Centre
On 29th May 2019**

Decision & Reasons Promulgated

On 14th June 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**IN
(ANONYMITY DIRECTION MADE)**

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss C Besso of Counsel instructed by Migrant Legal Project (Cardiff)

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

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge Lever and Judge O'Rourke (the judges) of the First-tier Tribunal (the FtT) promulgated on 7th February 2019.
2. The Appellant is an Egyptian citizen born 14th September 1985. His asylum claim was based upon a fear of the family of his former partner,

who he claims murdered her as a punishment for being in a relationship with him, and his fear of persecution by the Egyptian state on the basis of having been convicted in his absence of being a Muslim Brotherhood sympathiser.

3. The claim was refused by the Respondent on 13th August 2017. An appeal hearing took place on 8th December 2017 before Judge Boyes of the FtT. The appeal was allowed, but subsequently the Upper Tribunal set aside that decision and remitted the appeal back to the FtT to be heard de novo.
4. The judges heard the appeal on 5th February 2019. Oral evidence was given by the Appellant. The FtT found the Appellant to be an incredible witness and did not accept that he had been convicted in his absence in Egypt, and therefore did not accept that he would be at any risk from the authorities in Egypt.
5. In relation to the Appellant's fear of his late girlfriend's family, the FtT found at paragraph 41;

"Fear of his late girlfriend's family. We accept that it is entirely possible that the events as described took place (or some variant of them) and that they led to the Appellant leaving Egypt. However, we accept the submissions in the refusal decision as to sufficiency of protection, or, in the alternative, safe relocation within Egypt (particularly given that over ten years have now passed)".
6. The appeal was dismissed on all grounds.

The Application for Permission to Appeal

7. Reliance was placed upon three grounds.
8. Firstly, the FtT adopted an incorrect approach to credibility at paragraph 29. The FtT was required to consider the credibility of each of the Appellant's assertions, assessing coherence when measured against objective evidence. Instead, the FtT used blanket findings to dismiss the Appellant's credibility in the round, thereby allowing the FtT to pick and choose which aspects of the Appellant's claim should be believed.
9. Secondly, the FtT adopted an incorrect approach to internal relocation and sufficiency of protection. The FtT accepted at paragraph 31 that it was "entirely possible" that the events described took place and led the Appellant to leave Egypt. The Appellant therefore had a fear of his dead partner's family. The FtT approach was simply to accept submissions in the Respondent's refusal decision as regards sufficiency of protection and internal relocation. The FtT did not consider the Appellant's countervailing submissions or evidence.
10. The FtT failed to take into account information contained in the Appellant's witness statement about the loss of support from his family in Egypt. The FtT failed to take into account the Respondent's Country Policy and Information Note on Egypt: Background Information, including actors of

protection, and internal relocation published July 2017 and in particular paragraph 2.3.4 at C16 of the Appellant's bundle which states;

"In general, where the person fears non-state agents, internal relocation is likely to be reasonable but will depend on the nature and origin of the threat as well as the person's circumstances and profile".

11. The FtT failed to consider the Appellant's profile or his personal circumstances.
12. Thirdly, the FtT engaged in impermissible plausibility reasoning finding it "inherently implausible" that the Appellant had been convicted in his absence. There was no attempt to assess that claim against the objective evidence and submissions which had been made to the FtT to the effect that trials in absentia are anything but "inherently implausible".

The Grant of Permission to Appeal

13. Permission to appeal was granted by Judge Loke in the following terms;

"It is arguable that the judges' reasons regarding credibility did not sufficiently engage with the Appellant's account. In particular, those reasons given at [29(iii), (iv) and (v)] are arguably not sustainable reasons to reject the Appellant's account. Furthermore the findings at para [31] do not make it clear exactly what was accepted by the Tribunal. If the Tribunal so accepted that Fatima's mother's family had influence with the police as averred in the Appellant's witness statement, then this would have a bearing on internal relocation".

14. Directions were issued that there should be an oral hearing before the Upper Tribunal to ascertain whether the FtT decision contained an error of law such that it must be set aside.

My Analysis and Conclusions

15. At the oral hearing Miss Besso relied and expanded upon the grounds upon which permission to appeal had been granted. Mr Howells submitted that the FtT had not erred in law, and had made findings which were open to make on the evidence, and given adequate reasons for those findings.
16. The FtT produced a comprehensive decision, initially setting out the law, thereafter describing the hearing and the documentation considered, and then proceeding to set out in some detail, the Appellant's case, and the Respondent's reasons for refusing the application. The FtT then summarised the oral submissions made by the representatives.
17. The findings commence at paragraph 28. Paragraph 29 deals with credibility. I do not accept the submission that the FtT adopted an incorrect approach. At paragraph 28 the FtT set out the correct approach, confirming that the oral and written evidence has been considered in the round. In considering credibility the FtT was entitled to note that the Appellant accepted that when he initially entered the UK, he gave a false

name, date of birth and nationality. He claimed asylum in 2010 and subsequently absconded.

18. Miss Besso referred to paragraph 29(iii) in which the FtT described the Appellant and his then Sponsor's failure to attend the 2014 hearing of his EEA appeal, "indicating an opportunistic and meritless claim". Miss Besso submitted that the FtT was wrong in law to describe the previous EEA application and appeal as being "opportunistic and meritless". In my view it may have been more appropriate for the FtT to have referred to the Appellant's explanation in his witness statement, at paragraph 20 in which he explained that he had consulted a solicitor in relation to his application for an EEA residence card but he could not afford to pay the solicitor, so "just didn't get back to him". The Appellant explained that he thought his solicitor had lodged an appeal on his behalf but claimed that he did not know about it and he did not go to the hearing.
19. It is clear that the Appellant did not go to the appeal hearing. A copy of the appeal decision made by Judge Griffith was before the FtT in which Judge Griffith recorded that there was no appearance by the Appellant or his representatives. After the hearing some documents were sent to Judge Griffith by the solicitors representing the Appellant asking for the matter to be dealt with on the papers. The documents included a witness statement from the Appellant, unsigned and undated. Judge Griffith recorded at paragraph 20, that the decision by the Appellant and Sponsor not to appear at the hearing to give evidence and be cross-examined did not assist the Appellant's claim. Judge Griffith described a paucity of documentary evidence. The marriage was found not to be valid.
20. The Appellant's own evidence therefore appears to be that he instructed a solicitor, but thereafter failed to give that solicitor instructions, and it would appear that Judge Griffith did in fact find the appeal to have no merit. I do not find that the description by the FtT at paragraph 29(iii) of "an opportunistic and meritless claim" is a material error of law.
21. Miss Besso also challenged the finding at paragraph 29(iv) in which the FtT described the Appellant's conviction for possession of false identity documents, with intent, which was "compounded by his obviously false evidence as to having only obtained those documents on the day of his arrest".
22. It was common ground that the Appellant had been convicted of possession of false identity documents, and received a sentence of imprisonment. Miss Besso complained that as the Appellant had pleaded guilty, it was wrong of the FtT to refer to him giving "obviously false evidence".
23. I do not find the FtT materially erred on this point. The judge who sentenced the Appellant to imprisonment stated in passing sentence;

"I deal first with the offence involving the identity card. I reject any suggestion that you obtained it that very evening in order to use it to

gain entry to nightclubs. In any event, you no longer persist in that absurd basis of plea”.

24. While the Appellant may not have given oral evidence because he pleaded guilty, it is clear that he attempted to plead guilty on what the sentencing judge described as an absurd basis which was not accepted, and which the Appellant subsequently did not pursue. Therefore, although it is correct that the Appellant may not have given evidence on oath, his basis of plea was found to be obviously false and described as absurd, and the FtT did not err in law on this point.
25. In my view the FtT did not err in paragraph 29(v) in describing the Appellant’s exaggeration of the events of his arrest in Egypt in 2008, when describing these to Dr Briffa, who prepared a medical report. Neither did the FtT err at paragraph 29(vi) in referring to the conflicting nature of the Appellant’s current asylum claim and subsequent further submissions. It is clear that the Appellant initially agreed to return voluntarily to Egypt and then changed his mind, and made an asylum application on the basis of fear of his late partner’s family, and when that was rejected, made a claim on the basis of fear of the Muslim Brotherhood.
26. The FtT go on, in paragraph 30 to specifically consider police and court documents and explain why no weight was attached to them. At paragraph 31 the FtT accept that events in relation to the Appellant’s late partner may have occurred. At paragraph 32 the FtT do not accept that the Appellant has criminal convictions in Egypt, or is on any watch list for the authorities there, and conclude that he has fabricated this assertion.
27. At paragraph 33 the FtT consider Dr Briffa’s medical report attaching limited weight to it, due to concerns as to Dr Briffa’s reliance on the Appellant’s self-reporting, a lack of overview of his medical treatment, his exaggeration of events in Egypt, and taking into account that the report was almost a year old.
28. My view is that the FtT properly considered credibility, taking into account all material matters, and attaching what weight was deemed appropriate. The FtT did not reject the entirety of the Appellant’s account. The FtT was entitled to find the Appellant not to be a credible witness, and sustainable reasons for that conclusion were given. In relation to the aspects of the Appellant’s account which were not accepted, adequate and sustainable reasons were given for those conclusions.
29. The second ground relates to the approach of the FtT to internal relocation and sufficiency of protection. The FtT deal with this briefly. The FtT accept the submissions made in the Respondent’s refusal decision in relation to sufficiency of protection and internal relocation. Sufficiency of protection is considered at paragraphs 64–78. At paragraph 76 the Respondent contends that the Appellant has failed to demonstrate that the Egyptian authorities would be unable or unwilling to offer protection and there is evidence available that the authorities are able to offer

protection. At paragraph 77 there is reference to non-state agents, which relates to the late partner's family, and the Respondent contends that the Appellant has not demonstrated that they would have any influence over the State. The Respondent contends at paragraph 78 that the Appellant had provided no new or compelling evidence which would suggest that he would be unable to seek the protection of the police or unable to internally relocate.

30. It is of course correct that the FtT must take into account the personal circumstances of the Appellant. In my view they have done so. They have made findings in relation to the Appellant's lack of credibility. I do not find that there was any satisfactory evidence before the FtT to indicate that protection from the authorities in Egypt would not be available. I therefore do not find that the FtT erred in law in finding that there would be a sufficiency of State protection in Egypt.
31. Internal relocation is dealt with at paragraphs 79-84 of the refusal decision. It is not correct as contended at paragraph 7 of the grounds that the submissions consisted of generic observations about the geographical size of Egypt and no named or specific place was contemplated in relation to internal relocation. The Respondent specifically referred to Cairo at paragraph 79. At paragraph 83 the Respondent contended that the Appellant had failed to demonstrate that his late partner's family would have the capacity to locate him anywhere in Egypt. There is a further reference to relocating to Cairo at paragraph 83 although the Respondent does contend that the Appellant could relocate to any part of Egypt away from where his late partner's family live.
32. I do not find that evidence was before the FtT to indicate that internal relocation would be unduly harsh for the Appellant. There is reference in the Appellant's witness statement to him no longer having the support of his family. The evidence does not indicate that he would need the support of his family.
33. While the FtT has dealt very briefly with internal relocation and sufficiency of protection, in the circumstances, given the evidence that was before the FtT, I do not find that they erred in law in accepting the submissions made in the refusal decision that the Appellant would have a sufficiency of state protection in Egypt, and a reasonable internal relocation option which would not be unduly harsh.
34. Turning to the third Ground of Appeal, which in the grounds is referred to as being in paragraph 30, but it is in fact paragraph 29(vi) in which the FtT makes the reference to "inherently implausible" in the context of the Appellant being convicted in his absence in Egypt. In my view, the FtT are not stating that it is inherently implausible that an individual would be convicted in absence. What the FtT are saying, is that it is inherently implausible, that if the Appellant had been convicted in absence in 2014, that his family would not have been aware of this. The FtT point out that in evidence the Appellant agreed that his family had been approached by

the authorities, and therefore the Appellant would have been aware of this issue much earlier than when he first raised it in February 2017. The FtT was entitled to point out that even on the Appellant's own evidence he was aware of these matters during his imprisonment in the first half of 2016. The point that the FtT make, is that if this had occurred, the Appellant would have raised it far earlier than he did.

35. I conclude that the FtT considered all relevant evidence, made findings open to make on the evidence and gave sustainable reasons for those findings. The grounds disclose a disagreement with the conclusions reached by the FtT but do not disclose a material error of law.

Notice of Decision

The decision of the FtT does not disclose a material error of law. The appeal is dismissed.

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

7th June 2019

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

The appeal is dismissed. There is no fee award.

Signed

Date

7th June 2019

Deputy Upper Tribunal Judge M A Hall