



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001930
First-tier Tribunal No:
PA/51855/2020
IA/01306/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 25 April 2023

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

Mohammed Ahmed Shamseldin Mostafa Elhagagy
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr P Nath of Counsel

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

Heard by remote video at Field House on 11 April 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant has been granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Lloyd-Smith) promulgated 2.6.21 dismissing his appeal against the respondent's decision of 7.10.20 to refuse his claim for international protection.

2. The appellant, a citizen of Egypt, claims to have been sentenced in absentia to a term of 81 years imprisonment for debts incurred in his failed restaurant business. He had also claimed to have been suspected of links to the Muslim Brotherhood and that there was a distinct political link to his prosecution. Such a political link had been rejected in a previous appeal dismissed on 18.10.18 in which a finding was also made that if there were court orders against him relating to 'bounced' cheques, attempts should have been made to produce evidence of such.
3. This was a second appeal before the First-tier Tribunal, based on allegedly new evidence not previously considered, with a fresh claim and further submissions, all of which were rejected anew by the respondent on 7.10.20.
4. In her decision, Judge Lloyd-Smith addressed the issues under three primary heads: Court Judgements; Muslim Brotherhood; and Risk of Imprisonment and Prison conditions. Applying Devaseelan, the judge set out facts accepted and rejected in the first appeal decision (Judge Cruthers) before making her own analysis of the new evidence. For the reasons set out in the decision, the judge found no basis upon which to depart from the previous findings of Judge Cruthers and dismissed the appeal.
5. In summary, the grounds assert that Judge Lloyd-Smith (a) erred in law by acting in a procedurally unfair matter, failing to properly consider new evidence and speculated whether the Egyptian government was reviewing debtor legislation; failed to consider the changed circumstances described in reports not challenged by the respondent; erred in relying on the finding that as there were no ongoing payments the debt liability had been "exonerated"; having accepted that passing bad cheques is an imprisonable offence, failed to fully consider the expert report; (b) made unreasonable and irrational findings in relation to medical evidence; (c) failed to consider whether there were any very significant obstacles to integration pursuant to paragraph 276ADE(i)(vi) of the Immigration Rules;(d) failed to consider Article 8 ECHR adequately; and (e) failed to have regard to compassionate and exceptional circumstances claimed to exist in the case.

Procedural Unfairness:

6. It is argued that the judge failed to consider the further evidence not before Judge Cruthers, specifically various expert reports and other documentation (as set out at [3] of the grounds) as to the difficulties the appellant would allegedly face on return to Egypt. It is submitted that the material was "not sufficiently" considered and that on the basis of this new evidence the judge should have departed from the previous findings.
7. However, as the judge made clear at [27], the additional evidence had been carefully considered. It was not necessary for the judge to list or precis the evidence considered, provided that findings were made on the primary issues, supported by cogent reasoning.
8. At the outset of the hearing, I was invited by both representatives to give a preliminary view on the grounds. In my view, subject as it was to hearing further submissions, it is more the absence of clear findings, in relation the first and third heading referred to above, with supporting reasoning which undermines the decision, not any failure to properly consider the evidence or procedural unfairness.

9. I must first point out that the grounds repeatedly misstate what the First-tier Tribunal accepted and, therefore, need to be treated with caution. For example, it is asserted that at [29] of the decision the judge accepted that there were 26 cases against the appellant. That is not accurate; the judge was merely summarising the evidence relied on by the appellant. Similarly, the grounds suggest that at [32] the judge accepted that passing bad cheques is an imprisonable in Egypt. Once again, what is stated in the decision is no more than the judge referencing the evidence, not an actual finding of fact as suggested by the grounds.
10. However, I expressed some concern to both Ms Everett and Mr Nash that the judge does not appear to make any clear finding that the appellant would not face imprisonment, merely that it was unlikely that he would face a very long prison sentence, as such sentences are often reduced on appeal. There is also some reference to being able to obtain bail pending appeal. At [32] the judge stated: "I therefore find that there is insufficient evidence to suggest that the appellant would face a very long prison term for his failure to pay his debts." It may be that two issues are being conflated here; the failure to pay debts and the criminal offence of passing a bad cheque, which, incidentally, is also a criminal offence in the UK if done dishonestly. However, I struggled to locate a clear finding that the appellant has not been sentenced to imprisonment as claimed rather than a finding that any sentence would "likely" be reduced.
11. The further relevance is that when the judge went on at [44] to consider the issue under the third heading, the risk of imprisonment and prison conditions, it does not appear to be challenged that prison conditions in Egypt are anything but harsh. However, within the same paragraph the judge states, "In any event, it is not accepted that the appellant has been sentenced to 81 years imprisonment or that he would be made to serve the sentence imposed." In the following paragraph, [45], the judge stated, "I endorse the finding made by Judge Cruthers who was not convinced that the appellant would face a "real risk of even one day in prison on return to Egypt." The reasoning to support that finding is not apparent.
12. It may be possible to piece together from these excerpts that the First-tier Tribunal Judge did not accept that the appellant had been sentenced to imprisonment at all and, therefore, is not at risk of suffering harsh prison conditions giving rise to a claim for international protection but, as stated above, the reasoning is not clear. The reasoning is rather more suggestive of the conclusion that the appellant will not have to serve a lengthy prison sentence.
13. Following discussion with the two representatives as to the above issues, Ms Everett did not resist the appeal and conceded that there was a material error of law for lack of adequate findings and/or supporting reasoning. In the circumstances, it was not necessary to hear from Mr Nath further.
14. I note that Mr Nath did not press the issue of any error in relation to the judge's findings on the Muslim Brotherhood connection. It was not addressed in submissions or the skeleton argument. In passing, I observe that I found that aspect of the claim rather weak and in the absence of submissions on the issue could see no immediate error of law in respect of that issue in Judge Lloyd-Smith's decision.
15. For the reasons set out above, it was not necessary to address the remaining grounds of appeal.

16. In the circumstances and for the reasons set out above, I am satisfied that there was an error of law in the making of the decision of the First-tier Tribunal such as to require it to be set aside and remade. After discussing the matter with the two representatives, I have concluded that as there is a considerable amount of evidence and that full findings will have to be remade, the appropriate course is to remit this appeal to the First-tier Tribunal to be heard de novo.
17. I have considered but do not tie the hands of the First-tier Tribunal by preserving Judge Lloyd-Smith's findings in relation to the Muslim Brotherhood, although I have found no error of law in respect of those findings. However, the appellant may be best served by concentrating on the key issues of the alleged imprisonment for either non-payment of debts or not honouring post-dated cheques. The related issue of prison conditions will also need to be addressed afresh.

Notice of Decision

The decision of the First-tier Tribunal is set aside for material error of law;

The appeal is remitted to the First-tier Tribunal to be made afresh (de novo) with no findings preserved (though the First-tier Tribunal will have to consider what findings from Judge Cruthers decision should form the starting point);

I make no order for costs.

DMW Pickup

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Judge of the Upper Tribunal
Immigration and Asylum Chamber

11 April 2023