



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2022-005252
FtT No: PA/53134/2021
IA/08715/2021**

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 17 May 20223**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

**M M M A A also known as S M O E
(anonymity order made)**

Appellant

and

SSHD

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Katani & Co, Solicitors
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

Heard at Edinburgh on 19 April 2022

DECISION AND REASONS

1. The appellant appeals against the decision of FtT Judge Connal, promulgated on 29 August 2022. His grounds of appeal are fully set out in his application for permission to the FtT.
2. Ground 1 may be summarised as error on the medical evidence by:
 - i. considering it only after rejecting the asylum claim, overlooking that the diagnosis of complex PTSD by Dr Ross supported the occurrence to the appellant of a past catastrophe.
 - ii. overlooking that although the diagnosis was based on what the appellant told Dr Ross, that did not undermine the diagnosis.

- iii. using adverse credibility findings to reject the medical evidence and wrongly excluding that from the overall assessment; and
 - iv. overlooking that lack of early disclosure and inconsistencies might be the result of psychological trauma.
3. The appellant had previously claimed to be a Syrian, exhausting the appeal process on that basis in 2014 - 2016, and in 2020 making this claim as an Egyptian (which the respondent always suspected to be his nationality, and is now accepted). The FtT recorded at [25-26] that he did not submit that his mental health played any part in that deception, rather that it was his false claim which had affected his mental health.
4. The false claim was found at [28] to significantly damage his credibility, which is beyond challenge.
5. In the FtT, all that the appellant made of the medical evidence in relation to credibility is as recorded at [18 (iv) (g)], namely that his account was "consistent with his mental health condition". He relied on the medical evidence to support an article 3 case on health grounds, as recorded at [18 (vi) (a) - (d)].
6. I accept that the FtT stated findings (all closely reasoned) on the Refugee Convention claim under various headings as it went along, before saying at [49] that "considering all the evidence in the round" a well-founded fear was not established. It turned to the medical evidence under the separate heading, "article 3 health grounds ", at [52 - 57]. That approach reflected the case as it was put.
7. The respondent is correct in pointing out that was not argued to the FtT that the appellant's diagnosis bore significantly on the credibility of his account as now given; and it was expressly not part of his case that his mental health had anything to do with his previous false claim.
8. Mr Winter argued that the bearing of a diagnosis of complex PTSD on credibility is clear from case law, and should have been considered by the Judge, even although not advanced.
9. I accept that the point is well known. Put in context, however, the reason this was not stressed in the FtT was because it did nothing to counter a major problem with his credibility, the previous false claim.
10. The FtT's decision is notably thorough and careful. If there had been anything in the medical evidence which significantly assisted the appellant on credibility, it would have been considered.

11. Ground 1, in its various overlapping forms, is an ingenious afterthought which occurred to the appellant's representatives only after the FtT had carefully analysed every aspect of the case as it had been argued. It does not disclose an obvious oversight or other error on the law by the FtT.
12. Further, the appellant's credibility was rejected for many good reasons, some which were impossible to explain away by the diagnosis, and most of which are unchallenged in the grounds. It is unrealistic to conjecture that express reference to the possibility of inconsistency and inaccuracy due to mental difficulties might have led to another conclusion.
13. Ground 2 is "error when assessing the claim of failing to follow orders to shoot protestors" - in summary:
 - i. at [37], no explanation why the report of Dr Miles, a country expert, does not advance the case; the expression "cannot be completely ruled out" is supportive; the benefit of the doubt should be given; failing to keep matter in mind until final consideration in the round; same error at [45];
 - ii. at [39 (i)], no explanation why consistency "reduced when viewed against the previous false claim"; previous false claim conflated with consistency in detail given to medical professionals, which is a different concept; and
 - iii. at [39(iii)], doubt why weight given to an inconsistency, but not on the same matter when finding a relationship with appellant's partner.
14. Ground 2 (i) is about whether the appellant, as a police driver, might have been ordered to shoot at protestors. At [36], the Judge says that to the extent the report finds the claim "plausible and consistent with the background evidence", it adds weight to the claim. At [37], she finds that it "does not support the appellant's case" because the expert "would not normally expect a police driver" to be given that task. At [38] she takes into account that the expert says that while the claim "cannot be completely ruled out" it is something he would "not normally expect".
15. The comments at [36] and [38] are unexceptionable. The high point of this challenge is that the expression at [37] "does not support", unqualified, goes too far, because the possibility remained.
16. If the Judge had said, for example, "does not significantly support", that would have been beyond criticism. The totality of [36 - 38] is to that effect. The decision, as a whole, is not undermined by the absence of a minor qualification in one phrase.
17. At [45], dealing with the appellant's claimed desertion from the military and police, the Judge gives detailed reasons, (i) - (iv), for finding the report "not to

strengthen the appellant's case on this point". Mr Winter's submissions were not directed at this analysis. Ground 2 (i) shows no error in it.

18. At [39 (i)], the Judge finds that the weight to be placed on consistency in reporting to medical professionals is significantly reduced by the previous consistent pursuit of a false claim. That is obvious and unexceptionable, when the appellant made no mention of his present claims until 2020. It does not involve "conflation" with the concept of giving weight to consistent disclosure to medical professionals. There is no reason why one should not undermine the other. I find no substance in ground 2 (ii).
19. Mr Winter explained that ground 2 (iii) is based on the Judge at [39 (ii)] finding it adverse that the appellant gave inconsistent accounts to Dr Ross and in his witness statement of how he and his partner met, while at [62] she accepted the appellant's explanation for not mentioning the relationship in his fresh submissions, and accepted the relationship as genuine. I see no tension between those observations. Even if there was, the point at [39 (ii)] is minor among a multitude of reasons.
20. Ground 3 alleges error at [64] on article 8 by:
 - i. applying in a mechanistic manner an ability or capability test, rather than the reasonability or proportionality of the appellant's partner moving with him to Egypt; and
 - ii. leaving it in doubt why it would not be unduly harsh to remove the appellant given that there would be prolonged or indefinite delay in the parties being able to live together when it was not known when they could meet the immigration rules.
21. The ground relies on *GM (Sri Lanka) v Secretary of State for the Home Department* [2019] EWCA Civ 1630 at [51-53] *per* Green LJ. Mr Winter said that the Judge here fell into the same error. He submitted that she did not deal with whether there were "insurmountable obstacles"; in any event, the terms of the rules were not a complete test on proportionality, but only a factor; and another Judge, applying the correct test, might have concluded otherwise. He said that if set aside on this point, the appellant would seek to update his evidence, although that was likely to be brief and uncontentious. I was told that the only change is that the appellant and his partner (who were both present) now live together.
22. The facts of this case are much weaker from the appellant's perspective than those in *GM*. I note that it was observed there at [54] that comparators are of limited utility in article 8. However, I also consider that the present case did not turn on any nicety of the legal tests, but on analysing the substance of the appellant's article 8 case as it was put. His partner's (readily understandable) wish not to relocate to Egypt is dealt with at [64]. The appellant and his partner had not considered that option, which is part of the reason for absence of any more detailed consideration of the extent of the obstacles in their way. There is

an unchallengeable finding at [64 (ii)] that the consequences for her of the appellant's removal would not be "unjustifiably harsh". The appellant expressly put his case only outside the rules. The statutory consideration of giving "little weight - but not no weight" to the relationship appears at [66 (2) (e)]. The case did not turn on an erroneous distinction between the practicality and the reasonability of return. Ground 3 is, at best, academic.

23. If I had found an error of approach in terms of article 8, I would remake the decision without a further hearing. The appellant has not given notice, as he is required to do, of any additional evidence he would wish to lead for that purpose; but I would be willing to accept the only further matter on which he relies, which is that the relationship remains genuine, and he and his partner now live together.
24. The choice of carrying on their family life in Egypt is unwelcome to the appellant and, especially, his partner, for all the obvious reasons; but on all the evidence led there are no insurmountable obstacles or unjustifiably harsh consequences in that, and the outcome is not unreasonable or disproportionate.
25. The appeal to the UT is dismissed. The decision of the FtT stands.
26. An anonymity order was made in the FtT. It is doubtful whether an order is appropriate, but as the matter was not addressed in the UT, anonymity is maintained in this decision, until such time as a tribunal or Court directs otherwise.
27. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including his name or address, likely to lead members of the public to identify him. Failure to comply with this order could amount to a contempt of court.

Hugh Macleman
Judge of the Upper Tribunal, Immigration and Asylum Chamber
21 April 2023