



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: UI-2024-001191
First-tier Case Number: PA/50964/2023

THE IMMIGRATION ACTS

Decision & Reasons Promulgated

On 24th of May 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

M I M A
(Anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Raza, Counsel instructed by Marks and Marks, solicitors

For the Respondent: Mr K Ojo, Home Office Presenting Officer

DECISION AND REASONS

Heard at Field House on 7 May 2024

The Appellant

1. The appellant is a citizen of Egypt born on 28 September 1996. He appealed against a decision of the respondent dated 27 January 2023 to refuse a claim for

international protection following further submissions made on 17 September 2020. By a decision dated 5 March 2024 Judge of the First-tier Tribunal Gaskell allowed the appellant's appeal against the respondent's decision. The respondent appeals with leave against Judge Gaskell's decision. Although the matter comes before me as an onward appeal by the respondent I shall nevertheless continue to refer to the parties as they were known at first instance for the sake of clarity.

2. **Anonymity.** Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant has been granted anonymity, and is to be referred to in these proceedings by the initials S E. 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.

Failure to comply with this order could amount to a contempt of court.

The Proceedings

3. The appellant claimed asylum on 20 June 2016. This was refused by the respondent on 8 July 2017 and his initial appeal against that decision was dismissed by Judge of the First-tier Tribunal Chudleigh on 14 February 2018. Judge Chudleigh's determination was later set aside by the Upper Tribunal with no findings preserved. The appeal was remitted back to the First-tier Tribunal and heard by Judge of the First-tier Tribunal O'Garro. She dismissed the appellant's appeal on 2 May 2019. The appellant lodged further submissions with the respondent on 17 September 2020 which were refused by the respondent (but with a right of appeal) on 27 January 2023. It was against this January 2023 refusal that the appellant appealed and which led to the decision of Judge Gaskell on 5 March 2024.

The Appellant's Case

4. The appellant's case is that he was a supporter of the Muslim Brotherhood the party of the former President of Egypt Mohamed Morsi. The appellant attended a demonstration on 12 June 2013 supporting President Morsi and counter-protesting against protests to have the President overthrown. The appellant was arrested and detained until 17 June 2013. He thereafter fled Egypt, and in his absence, on 5 October 2013, he was sentenced to 10 years imprisonment.

The Decision at First Instance

5. Judge O'Garro had concluded that it was implausible that the appellant was arrested at a demonstration in support of President Morsi on 12 June 2013 when Morsi was still in power until he was ousted on 30 June 2013. If the appellant could not have been arrested for pro-Morsi demonstrating as early as 12 June 2023, the appellant's case became incredible. The appellant produced to Judge Gaskell new translations of two documents which the appellant argued resolved certain inconsistencies in his claim.

At [34] of the determination Judge Gaskell stated:

“On the basis of the conclusion reached by Judge O’Garro regarding the credibility of the appellant’s account, of course the documentation which he produced clearly could not be relied upon and she would be entitled to conclude that it was most likely fabricated. But if one appreciates the serious possibility that the account is true, then all of the documentation is consistent with the account and adds weight to it.”

The judge allowed the appeal.

The Onward Appeal

6. The respondent appealed this decision arguing that the judge had failed to provide adequate reasons either for departing from Judge O’Garro’s findings or for finding that the appellant would be at risk on return. The only reasons provided by the Judge for accepting the appellant’s account were that the account was accepted as being truthful. The First-tier judge had failed to make any findings or provide any reasons that assessed the reliability of the documentation relied on by the Appellant. Pursuant to the Upper Tribunal authority of **Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC)** it was necessary for First-tier Tribunal judges “to identify and resolve the key conflicts in the evidence and explain in clear and brief terms their reasons for preferring one case to the other so that the parties can understand why they have won or lost.”
7. Permission to appeal was granted by the First-tier (Judge Curtis) who stated: “Judge O’Garro found a number of deficiencies in the documentation produced by the Appellant ... [the appellant] made a visa application on 16 June 2013 when elsewhere he had said he was detained at that time. The Judge arguably does not adequately reason why those deficiencies could be overlooked, or set aside, in favour of the Appellant.”
8. The appellant submitted a Rule 24 response to the grant of permission which argued that the respondent’s grounds were no more than a disagreement with the result. The judge had adequately set out his reasons for departing from Judge O’Garro’s findings. The judge had accepted that it was possible that the appellant had been arrested as claimed.

The Hearing Before Me

9. In consequence of the grant of permission the matter came before me to determine in the first place where there was a material error of law in the decision of the First-tier Tribunal such that it fell to be set aside. If there was then I would make directions on the rehearing of the appeal. If there was not the decision at first instance would stand.

10. For the respondent it was argued that the sole ground of appeal in this case was inadequate reasons given by the judge in the determination. The decision to allow the appeal was not transparent in any way. It was made on the basis of plausibility rather than credibility. There were some new translations introduced into the appellant's case but no indication from the determination that the judge was circumspect in attaching weight to these new translations. Section 8 of the Asylum (Treatment of Claimants etc) Act 2004 was not engaged with by the judge even though there was delay in this case. The judge appeared to say that because the new translations matched the appellant's account the appeal should be allowed but that did not address the credibility points made by Judge O'Garro. The judge had not said what should be made of the old translations. The respondent accepted that the judge did not have to refer to every single point of evidence but the respondent could not understand from this determination why he had lost his appeal.
11. In reply counsel referred to his rule 24 response (which I have summarised above at paragraph 8). The tribunal needed to be satisfied that the First-tier was plainly wrong if it was going to set aside the First-tier decision. Judge O'Garro had said that at the time of the appellant's conviction in September 2013 the Muslim Brotherhood were not banned in Egypt but at [33] of the First-tier determination the judge accepted that the Brotherhood had been banned. It would be helpful if the judge had cited the evidence for that assertion which was at page 226 of the hearing bundle. I pause to note here that the CPIN referred to states that the Brotherhood was banned in "September 2013" it does not say on which day.
12. Counsel submitted that the judge had applied the authority of Devaseelan and there was no challenge to the judge's self direction on that point. The judge had set out a summary of judge O'Garro's determination and the new evidence which was now before him. The judge's conclusions at [32] to [36] were based on evidence before the judge and as a result of the new evidence Judge Gaskell show that Judge O'Garro was possibly wrong in her conclusions. [34] of the determination had to be read as a whole. [34] said that if you appreciated the possibility the appellant's account was correct then all of the evidence which came thereafter became credible.
13. This was a properly focused determination. The respondent was not challenging or disputing whether it was plausible that the appellant was arrested. The judge had provided a reference to evidence to show why it was plausible. When granting permission the First-tier referred to specific findings of Judge O'Garro which it was said had not been addressed by Judge Gaskell. I queried with Counsel whether the Judge Gaskell should have given a reason for preferring the second translation provided rather than first translation which had been before Judge O'Garro. In reply counsel referred to the appellant's witness statement in which the appellant said he had noticed errors in the translations. The respondent had not disputed that at the hearing. Overall one could not say that judge Gaskell was plainly wrong or irrational.

14. In conclusion for the respondent the presenting officer stated that the issue regarding the date of banning of the Muslim Brotherhood was a live issue. The police interview with on 13 June 2013 and referred to the Muslim Brotherhood as a terrorist organisation at a time when President Morsi was still in power. That issue had not been addressed at all by Judge Gaskell in his determination.

Discussion and Findings

15. It should be reasonably possible for a losing party to understand why they have lost by looking at the determination in the case. At the same time the tribunal must be on its guard not to consider a mere disagreement with the result as indicating an error of law. The problem in this case is that it is not clear on what basis the judge has arrived at his decision. The appellant's appeal against the respondent's decision to refuse international protection had been dismissed by Judge O'Garro and there was no successful onward appeal against that decision. The appellant then made further representations to the respondent which appear to have included amended translations of certain documents.
16. The appellant's claim before Judge O'Garro had been dismissed by her because the appellant's claimed timeline of events leading up to his persecution was found to be impossible. The appellant could not have been interviewed at 5:15 PM by the police if he had not been arrested until after 9 PM. Judge Gaskell appears to take the view in his determination that if the amended translations were accepted (and the appellant was therefore interviewed the following day) then at least some of the inconsistencies in the appellant's account could be explained and the account could then be accepted as being reasonably likely to be true to the lower standard of proof.
17. The question however is could the amended translations be accepted as true? This was a key issue on which the judge needed to make a decision. He does not appear to have done so at [34] or elsewhere. It was a matter for the judge which translation he preferred but he did have to give some reasons for his preference. A further problem was that even if the translations dealt with some of the discrepancies they did not deal with all of them as the permission judge pointed out, see paragraph 7 above. The First-tier still needed to explain why no weight was placed on the other discrepancies identified by Judge O'Garro but not addressed by the new documents. These were the key issues in the case which the First-tier needed to address but which were not addressed.
18. If the rule 24 response is correct to characterise the respondent's grounds of onward appeal as being a mere disagreement with the result then the onward appeal falls away. However a careful examination of the determination of the First-tier in this case does indicate that there are difficulties in the way the judge has arrived at his conclusions. I agree with the permission judge that [34] appears to indicate that Judge O'Garro, having found the appellant not to be a credible witness, then simply disregarded the documentation as being unreliable. Such an approach by Judge

O'Garro would be an error of law If that was one of the basis on which the First-tier departed from Judge O'Garro it was an unsound basis as Judge O'Garro did reason her findings in this case and did look at all the evidence in the round as she was obliged to do.

19. Judge Gaskell did not come to a final view on whether the events described by the appellant were reasonably likely to have been true. What the judge said was that if one accepted the serious possibility that the account was true then the documents added weight to the account but that begs the questions should one accept the account and should one accept the documents? The use of the conditional "if" implies that the judge has not in fact decided whether the account is true or whether the documents are reliable. This is born out by the lack of evidence in support put forward by the judge.
20. I find overall that it is not possible from this determination for the losing party in this case the respondent to understand why they have lost the case. In those circumstances there is a material error of law because the judge has failed to give adequate reasons to support his conclusions. I therefore set the determination of the First-tier aside and direct that the matter be remitted back to the First-tier to be decided by another judge, not judges Chudleigh, O'Garro, Gaskell or Curtis. I do not consider that this is a matter which can be retained in the Upper Tribunal. In view of the difficulties with the First-tier Tribunal's determination it cannot be said that there was a full hearing of the appeal in this case. I am conscious that this is the second time the case has been remitted back to the First-tier but both parties are entitled to a full explanation of the decision in this case. I would also add that if the appellant wishes to challenge the accuracy of the translations as they had been before Judge O'Garro some reliable evidence indicating any alleged errors will be required. The respondent may also wish to consider this point.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.

I remit the appellant's appeal against the respondent's decision back to the First-tier to be reheard with no findings of Judge Gaskell preserved.

Signed this 14th day of May 2024

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Judge Woodcraft
Deputy Upper Tribunal Judge