



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001481

First-tier Tribunal No: PA/53879/2023
and LP/02213/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 13th of September 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE SKINNER

Between

MH
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M. Mohzam, counsel, instructed by CB Solicitors

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

Heard at Field House on 3 September 2024

Order Regarding Anonymity

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 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.

DECISION AND REASONS

Introduction

1. The appellant is a national of Egypt who claimed asylum on 24 October 2019. The basis of his claim was that he was involved in a blood feud with the family of his sister's (now deceased) fiancé. The Respondent refused his claim by decision dated 14 June 2023 and the appellant appealed to the First-tier Tribunal ("FTT"). In a decision dated 10 February 2024, the FTT dismissed his appeal. The appellant now therefore appeals against the FTT's decision with permission to the Upper Tribunal.
2. The hearing before me took place via MS Teams. There were occasions when Mr Mohzam's and Mr Bates' connections froze. However, it was clear to me when this occurred and, once Mr Mohzam and Mr Bates respectively disconnected and reconnected to the call, it was possible to carry on and I am satisfied that each party was able to make all the submissions they wished to.

Decision of the FTT

3. The FTT's decision sets out the background at [3]-[15]. It is unnecessary to go into the detail of this for present purposes, but it is necessary to note that the Judge noted at [3] that the appellant was born on 1 August 1999.
4. At [16]-[22], the FTT set out the documentary evidence and certain preliminary matters and at [23] summarised the issues that it was required to decide, in essence whether the appellant had a valid protection claim and/or whether his removal would breach Article 8 ECHR. At [24]-[34] the FTT summarised what took place at the hearing and the legal framework which it was to apply.
5. The FTT's findings in relation to the protection claim are contained at [35] to [66], and in relation to Article 8 ECHR at [67]-[73].
6. The FTT's analysis of the appellant's protection claim may be summarised as follows:
 - a. At [37], the FTT reminded itself that the lower standard of proof applied with the burden being upon the appellant.
 - b. At [38]-[51], the FTT considered various inconsistencies in the appellant's account:
 - i. Whereas in his statement of 14 January 2021, he had stated that his sister's then fiancé's family had "raided my home" and "beat my father and my mother", in his home office interview on 23 September 2021, he stated that they did not enter the house and that no one was hurt. In his oral evidence, the appellant gave a third version of events, that the family were trying to hit his mother with the back of their weapons. The judge found this inconsistency damaged the appellant's credibility.
 - ii. Whereas in his January 2021 statement the appellant stated that his uncle killed his sister's fiancé upon arrival at his home, in his interview he had stated that his uncle's intention in visiting the home was to talk and get to the truth.

- iii. The FTT did not accept as credible the appellant's statement in interview that his uncle went to the fiancé's house to get to the truth of what happened without first approaching the appellant for his version of events.
 - iv. Whereas in his January 2021 statement the appellant had stated that his family scattered all over the place as the fiancé's family wanted to kill members of his family, in his substantive interview the appellant stated that it was only himself and his uncle that were the subject of the claimed blood feud. The FTT again considered this inconsistent and damaging the appellant's overall credibility.
 - v. Whereas in his substantive asylum interview the appellant stated that the fiancé's family were powerful and well known within his local area, and that his sister's fiancé's brothers were senior police officers in the local area and had good connections, he later stated that they were police officers in Sharm El Sheikh, located around 5 or 6 hours away from the local area. Further, the appellant was unable to state what rank or role they had within the police other than that they were senior officers. While stating they had good connections and were powerful in the area, the appellant was unable to give any further detail as to who they were connected with or in what way they were powerful. The FTT regarded the appellants evidence in this regard as vague.
- c. At [52]-[58], the FTT considered the documents relied on in accordance with Tanveer Ahmed [2002] UKIAT 00439:
- i. The documentary evidence was only produced very shortly before the appeal hearing and, while the appellant suggested that his uncle obtained the document service Lister in Egypt and that he had been trying to obtain the documents for over 2 years, the FTT noted that there was no mention of this in his statement.
 - ii. The FTT then noted that no statement had been provided by the appellant's uncle to corroborate his account of how the documents were obtained, which the FTT found could have reasonably been obtained.
 - iii. Mentioning his original statement arrest warrant or summons for him. The appellant in his oral evidence had accepted that words had been added at his request to the warrant and summons document. Furthermore, it was only issued in late 2023 despite the appellant having fled Egypt in 2015. The appellant was unable adequately to explain why the summons had the date of the hearing before the FTT on it. Little weight could therefore be attached to the purported arrest warrant / summons document.
 - iv. The 'Anticipation of Arrival' document stated that it had been signed on 5 December 2023 and that the appellant should be quickly arrested and brought immediately upon his arrival. Given that the criminal ruling was in 2015 the FTT did not find it credible that this document would only have been prepared eight years later. The 'Statement from the general schedule' Document was also only issued on 5 December 2023 at the alleged request of the appellant's representative.
 - v. Considering the documentary evidence in the round, the FTT found that only little weight could be attached to it.
- d. At [59]-[60], the FTT considered that the appellant did not have a good reasons for not having claimed asylum en route from Egypt in any of

- Italy, Slovenia, Belgium or France and that his failure to do so damaged his credibility.
- e. The FTT accordingly did not find that the appellant had given a credible account of his reported problems in Egypt, was not satisfied to the lower standard of proof that the appellant would suffer a real risk of persecution on his return from either his sister's fiancé's family or the Egyptian authorities. The FTT was not satisfied that this family was powerful or well connected as alleged. The FTT was not satisfied that an arrest warrant or summons had been issued against the appellant.
 - f. At [63], the FTT accepted that victims of blood feuds and members of a particular family may potentially form a particular social group. For the reasons already given, the FTT was not satisfied that the appellant was at a real persecutory risk on return to Egypt.
 - g. At [64], the FTT noted that it had taken into consideration the background evidence provided, but, considering the CPIN, it was satisfied that there was a functioning police force in it in Egypt to whom the appellant could seek protection if, contrary to the earlier findings, the appellant had in fact encountered problems from his sister's fiancé's family.
 - h. At [65], the FTT recalled that it was not satisfied that the appellants sister's fiancé's family were powerful or well-connected in Egypt, and if he encountered problems from them, the FTT considered that it would not be unduly harsh and/or unreasonable for him to relocate to another area of Egypt to avoid problems.
7. At [66]-[67], the FTT records that the appellant's representative had accepted that his claim under articles 2, 3 and 8 ECHR stood or fell with the consideration of the Refugee Convention claim. It is not therefore clear to me why the FTT went on to consider Article 8 for itself, but nonetheless it did so, concluding that the appellant's removal would be proportionate.
8. Accordingly, the FTT dismissed the appellant's appeal.

Appeal to the Upper Tribunal

Grounds

9. In his grounds, the appellant relies on a single ground of appeal, namely that the FTT erred in law in failing to take account of the appellant's age at the time of the alleged incident in assessing his credibility. Reliance is placed on the decision of KS (benefit of the doubt) [2014] UKUT 00552 (IAC).
10. Permission to appeal was refused by the FTT, but by a decision dated 10 May 2024 was granted by the Upper Tribunal. In granting permission to appeal, Upper Tribunal Judge Mandalia stated, so far as is relevant, as follows:

"Although the decision of Judge Howard refers to the appellant's date of birth at paragraphs [1] and [3] I am persuaded that the admirably focussed grounds of appeal identify an arguable error of law that warrants further consideration. There is no reference by the Judge to the Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance, that states, inter alia, that where there were clear discrepancies in the oral evidence, a judge should consider the extent to which the age,

vulnerability or sensitivity of the witness was an element of that discrepancy or lack of clarity.”

11. The respondent filed a response to the appeal pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 dated 23 May 2024. Unfortunately, it appears but this was not served on the appellant and instead a rule 24 response in a different case was provided. Mr Bates was content not to rely on the 23 May 2024 response.

Analysis

12. I am afraid that, notwithstanding Mr Mohzam’s tenacious and able submissions on behalf of the appellant, I am unable to accept that the FTT erred, as alleged or at all.
13. The first point to note is that the appellant was born on 1 August 1999. He was accordingly 22 years old when he underwent his asylum interview and 24 years old at the date of the FTT hearing. He was about 16 at the time of the events that he claims took place in Egypt.
14. The 2010 Guidance referred to by Judge Mandalia in his decision granting permission to appeal is concerned with those who are (or may be) children or otherwise vulnerable when they give evidence. Hence, it requires consideration of what steps should be taken to minimise exposure in the hearing to matters that an appellant or witness may find traumatic, requires the management of the hearing or list to be adjusted to allow a person to give the best evidence they can give and to take account of the effects of being a child or having a particular vulnerability when assessing that person’s evidence. I accept that, even if there is no bright line rule, as Mr Mohzam submitted, such that the Guidance does not cease to apply on someone’s 18th birthday, the 2010 Guidance is not concerned with the assessment of evidence given by adults in their 20s who do not have any particular vulnerability, but whose evidence relates to their childhood.
15. This guidance was considered in AM (Afghanistan) v SSHD [2017] EWCA Civ 1123, [2018] 4 WLR 78 to which Mr Mohzam drew the Tribunal’s attention, in which the Court of Appeal gave guidance on the general approach to be adopted in law and practice to the fair determination of claims for asylum from children, young people or other incapacitated or vulnerable persons whose ability to effectively participate in proceedings may be limited. In AM the Appellant was 15 at the date of the hearing and there is nothing in this decision to suggest that the Guidance applies simply by reason of the age at which the events about which evidence is being given took place.
16. I accept, of course, that in assessing evidence about events that took place a number of years ago, and particularly where events took place when a witness was a child, a judge may need to be alive to the frailties of human memory, that memories can become less clear with time and that these memories may have been developed as a child. In that way, it may be necessary to give someone the benefit of the doubt in relation to events that took place in childhood or adolescence in a way which might not be the case in respect of events being recalled that took place during adulthood. That is all part and parcel of the need to assess the credibility of evidence in its context, which includes any relevant characteristics of the person giving the evidence. However, as is made clear by

KS (benefit of the doubt), the requirement that a child-sensitive application of the standard of proof, sometimes referred to as the benefit of the doubt principle, be applied is not a rule of law and is not of universal application. It all depends. Failure to adopt such an appropriate is accordingly not of itself an error of law. Indeed, as the Tribunal held in paragraph (3) of the headnote, it adds nothing of substance to the lower standard of proof in asylum (and other protection) claims, which affords a positive role for uncertainty.

17. In those circumstances, I can see no error in the decision of the FTT. It was not suggested that to the FTT that it should adopt a child-sensitive approach to the appellant's evidence. The FTT referred to the appellant's date of birth in [1] and [3] and to the fact that the appellant lived in Egypt for the first 16 years of his life in [68]. It accordingly cannot be suggested that the FTT was unaware that the appellant was a minor at the dates of the events that he alleges took place. The discrepancies in the Appellant's evidence were not mere omission of details but were inconsistencies that, on any view, went to the core of his claim. They were compounded with obvious difficulties with the documentary evidence. In my judgment, the FTT was accordingly amply entitled to find that the appellant's account was not credible.
18. Mr Bates submitted, further, that even if the FTT had erred in the way asserted by the appellant, any such error was not material, because it had made an alternative, and unchallenged, finding that there is a functioning police force in Egypt to whom the appellant could seek protection (see [64]). Given my conclusion that there is no error of law in the decision, this does not strictly arise for decision, but for completeness I note that I do not accept that this would render the error immaterial. As noted, part of the appellant's claim was that his sister's fiancé's brothers were in the Egyptian police. While the FTT considers the possibility of sufficient state protection, if "contrary to my findings above, the appellant had encountered problems from [the fiancé's] family", the FTT did not consider whether there would be sufficient state protection if the appellant's account of the brothers being senior police officers were accepted as credible. For this to have been dispositive, it seems to me that the FTT would have needed to have done so, as what influence they may have had within the police could potentially be relevant to what protection the police could provide in practice.

Notice of Decision

The decision of the First-tier Tribunal does not contain an error of law and the decision shall stand.

Paul Skinner

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

3 September 2024