



**Upper Tribunal  
(Immigration and Asylum Chamber)  
AA/08492/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at** Field House  
**On** 15 July 2016

**Decision Promulgated  
On** 18 July 2016

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

**Between**

**I A M E  
(Anonymity Direction Made)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Kirk (counsel), instructed by Elder Rahimi, solicitors  
For the Respondent: Mr K Norton, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant, because the appellant is a minor.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Raymond promulgated on 19 April 2016, which dismissed the Appellant's appeal on all grounds.

### Background

3. The Appellant was born on 10 June 1998 and is a national of Egypt. On 15 May 2015 the Secretary of State refused the Appellant's application for asylum.

### The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Raymond ("the Judge") dismissed the appeal against the Respondent's decision.

5. Grounds of appeal were lodged and on 20 June 2016 Upper Tribunal Judge Smith gave permission to appeal stating inter alia

"... I am concerned that, even taken as a whole, the Judge's credibility findings are based on a high degree of speculation coupled with some quite minor inconsistencies which might be explained by the Appellant's age. I therefore grant permission on grounds one and three.

3. I am less convinced by ground two particularly when the content of that document and its manner of production is considered. However, I do not limit the grant of permission."

### The Hearing

6. (a) Mr Kirk, counsel for the appellant, moved the grounds of appeal. He explained that there are three grounds of appeal. The first two grounds of appeal amount to a rationality challenge. The third ground of appeal argues that the Judge failed to take account of relevant case law and failed to follow the guidance on the assessment of evidence of minors.

(b) Mr Kirk read through the grounds of appeal and argued that the Judge's reliance on implausibility in assessing credibility is unsafe. He told me that it is clear from a fair reading of the decision that the Judge had failed to understand some of the evidence placed before him, and that the Judge had proceeded on his own assumptions rather than a clinical and impartial examination of the evidence placed before him. As a result, Mr Kirk argued that the judge had drawn erroneous inferences and made inconsistent findings of fact based on his own assumptions.

(c) Mr Kirk told me that one crucial piece of documentary evidence was a court document from Egypt. The Judge dealt with that document at [117] of the decision and then relied on his own assumptions rather than the evidence contained in the background materials. As a result, Mr Kirk argued that the Judge came to an irrational conclusion & failed to give

adequate reasons. The thrust of this submission is that the Judge failed to give adequate reasons throughout the decision and failed to give weight to material matters.

(d) The final ground of appeal related to the assessment of evidence of minors. The appellant was 16 years of age when he was interviewed, and was 17 years of age when he gave evidence in this appeal to the First-tier. Mr Kirk relied on GM (risk on return – family) DRC 2002 UKIAT 06741 and the Joint Presidential Guidance Note number 2 of 2010. He told me that the Judge failed to exercise the requisite degree of caution in assessing the various strands of the appellant's evidence.

(e) Mr Kirk asked me to allow the appeal and set the decision aside.

7. Mr Norton for the respondent told me that the decision does not contain any errors of law, material or otherwise. He told me that the Judge had prepared a careful and detailed decision which withstands scrutiny. He took me to [110], [112] and [118] of the decision and told me that there is clear that the Judge was mindful of the appellant's young age when considering his evidence. He reminded me that, in granting permission to appeal, Upper Tribunal Judge Smith was not impressed with the second ground of appeal. He asked me to dismiss this appeal and allow the Judge's decision to stand.

### Analysis

8. The Judge's credibility findings are set out at [67] to [109] of the decision. Throughout those paragraphs, the Judge is critical of the account given by the appellant, but at [76] the judge clearly is influenced by a presumption. Between [78] and [82] the Judge discusses conflicting evidence which he does not clearly resolve. At [92] the Judge clearly embarks on speculation and engages in a narrative which is not part of the fact-finding exercise. At [94] the Judge delivers a dramatic interpretation of the background materials without explaining the source. At [95] the Judge offers what seems to be his own view of Muslim brotherhood recruitment which does not have a foundation in the evidence which was placed before the Judge.

9. The Judge has clearly gone to great care to consider each strand of evidence and has identified conflicts of evidence. The two problems with the Judge's decision are that although he identifies conflicting accounts in the various sources of evidence he does not resolve a number of those conflicting accounts. The second problem is that whilst engaging with the various strands of evidence the Judge strays into expressing (what looks like) his own opinion, rather than completing an evidence based fact-finding exercise directed at drawing impartial conclusions.

10. It is beyond dispute that the appellant was only 16 years of age when he participated in screening interview and substantive asylum interview.

He was 17 years of age when he gave oral evidence to the First-tier Tribunal.

11. In October 2010 the Presidents of the First-tier and Upper Tribunals of the IAC released a guidance note for Judges assessing and dealing with the requirements of vulnerable people (including children) in the Tribunals Service. 10.3 of that guidance says

10.3

Assessing evidence

Take account of potentially corroborative evidence

Be aware:

- i. Children often do not provide as much detail as adults in recalling experiences and may often manifest their fears differently from adults;
- ii. Some forms of disability cause or result in impaired memory;
- iii. The order and manner in which evidence is given may be affected by mental, psychological or emotional trauma or disability;
- iv. Comprehension of questioning may have been impaired.

12. Although the Judge reminds himself that the appellant was a child when his evidence was taken, he makes no reference to the Joint Presidential Guidance, and it is not obvious from an objective reading of the decision that his credibility findings are approached with the caution necessary when considering the evidence of a minor.

13. I find that these errors are material errors in law because the outcome to the appellant's appeal may have been different if the Judge had followed the joint presidential guidance when assessing credibility. There may well be inconsistencies in the appellant's evidence, but the approach taken by the Judge to those inconsistencies amounts to a material error of law. As the Judge's decision contains material errors of law, I must set it aside.

14. The Judge's decision cannot stand and must be set aside in its entirety. All matters must be determined afresh. I consider whether or not there is sufficient material before me to enable me to substitute my own decision. Because of the nature and extent of the fact-finding exercise required I find that I cannot substitute my own decision. This case requires to be determined afresh.

#### Remittal to First-Tier Tribunal

15. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25<sup>th</sup> of September 2012 a case may be remitted to the First Tier Tribunal if the Upper Tribunal is satisfied that:

*(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or*

*(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.*

16. In this case I have determined that the case should be remitted because of the nature and extent of the fact finding exercise necessary to reach a just decision in this appeal. None of the findings of fact are to stand. A complete re-hearing is necessary.

17. I remit the matter to the First-tier Tribunal sitting at Hatton Cross to be heard before any First-tier Judge other than Judge Raymond.

## **CONCLUSION**

### **Decision**

**18. The decision of the First-tier Tribunal is tainted by material errors of law.**

**19. I set the decision aside. The appeal is remitted to the First Tier Tribunal to be determined afresh.**

Signed

Date 18 July 2016

Deputy Upper Tribunal Judge Doyle