



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/01746/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 27 June 2017**

**Decision & Reasons Promulgated
On 12 July 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**AHML
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. A. Eaton, Counsel, instructed by Barnes Harrild & Dyer Solicitors

For the Respondent: Mr. P. Deller, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Ian Howard, promulgated on 5 April 2017, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse to grant asylum.
2. As this is an asylum appeal I make an anonymity direction continuing that made in the First-tier Tribunal.
3. Permission to appeal was granted as follows:

“I am satisfied that there is an arguable error of law in this decision in that the Judge made adverse findings in respect of a judgment in absentia without putting his concerns to the Appellant. Further, the Judge made an arguable error of law in finding that this was the only evidence he had before him, by not taking into account the medical report in respect of the Appellant’s father.”

4. The Appellant attended the hearing. I heard brief submissions from Mr. Eaton and Mr. Deller in which Mr. Deller accepted that the decision involved the making of a material error of law. Having set the decision aside, I proceeded to hear submissions on the remaking of the appeal.

Error of Law Decision

5. In submissions, Mr. Eaton relied referred to the judgment of the criminal court in Egypt (page 122 of the Appellant’s bundle). In paragraph 32 of the decision the judge found that he could not rely on this judgment because of the discrepancy in relation to three of the names listed at the start and at the end. It was submitted by Mr. Eaton, and accepted by Mr. Deller, that this had not been put to the Appellant at the hearing. Neither had it been raised by the Respondent in her decision.
6. I find that the judge has dismissed the Appellant’s appeal essentially as a result of his findings in relation to this judgment. To make these findings without giving the Appellant a chance to respond to them is an error of law.
7. However, I further find that, although the judge states that he has studied the translated copy carefully, this cannot be the case given its contents. In the fourth paragraph on page 122 it sets out and corrects errors made in the names listed at the start of the judgment, and explains why the names at the end of the judgment are therefore different.
8. In paragraph 32 the judge refers to the name of Ashour El-Sayed Abdullatif Al Azli, the seventh person listed on the indictment on the first page of the judgment. On page 122 a correction is made stating that the seventh accused person is called Abdul Rahim Hassan Abdullatif Ali. This is the name listed at the end of the judgment on page 125.
9. The judge also refers in paragraph 32 to Ashraf Ahmed Mohammad El-Shouki and states that he does not appear to be one of those accused on the first page. However, on page 122 it states that the second accused person is called Ashraf Ahmed Mohammad El-Shouki and is known as Abo Ghaiba. This is the name listed as the second accused on the list at the front of the judgment.
10. Similarly the judge refers to Sami Yousri El-Sayed Mohammad Al-Zentawi and states that he does not appear to be of those accused on the first

page, but again at page 122 there is a reference to this man stating that the fourth accused person is called by this name.

11. I therefore find that, had the judge studied the translated copy carefully as he claims to have done, he would have found that halfway through the judgment is a list of corrections of the names given on the first page of the judgment. Therefore, even had the judge done what he should have done and put these alleged inconsistencies to the Appellant, within the judgment itself there is an answer as to why the names listed at the start and the end do not precisely correspond.
12. It is therefore clear that, there having been an answer to this alleged inconsistency, an answer which is contained within the very document which the judge purports to have considered carefully, the judge's error in failing to put this issue to the Appellant is a material error.
13. I therefore set the decision aside. As was agreed between Mr. Eaton and Mr. Deller, the findings between paragraphs 28 and 31, that the event took place as claimed in May 2011 and that the Appellant was present, can be preserved.
14. Mr. Eaton submitted that he did not want to call further evidence and Mr. Deller accepted that the findings which were set out up to paragraph 31 could be adopted by the Upper Tribunal in remaking the decision.

Remaking

15. I have before me the Appellant's bundle of 213 pages. This is the bundle which was before the First-tier Tribunal. I have the grounds of appeal and the skeleton argument before the First-tier Tribunal. I also have a Respondent's bundle (to Annex 5). As stated above, the appeal proceeded on the basis of submissions only.
16. Mr. Deller submitted that there was not much more that he could add. The incident was verifiable and it boiled down to the Appellant's evidence and the Secretary of State's treatment of that evidence. What was necessary was a proper appraisal and assessment of the documentary evidence, and whether a combination of the Appellant's account and the documentary evidence established that the Appellant was involved, and the consequences were as claimed. The judgment was a lengthy document which dealt with the issue of the errors and the changes of name. Nevertheless the burden rested on the Appellant. He conceded that the Appellant's appeal would succeed on asylum grounds if the account as put by the Appellant was established to have taken place.
17. Mr. Eaton submitted that the key issue was that set out at paragraph 29 of the decision. There was an incident in May 2011. The villagers reacted angrily and the police were humiliated. He submitted that the judgment was a lengthy document and that there were no reasons not to consider it

to be genuine. He referred to the case of SA (Kuwait) [2009] EWCA Civ 1157. There was nothing to suggest that this document had been tampered with.

18. The expert, Dr. Armbrust, had stated in his report in response to question 8 that the document had official stamps on every page. He submitted that there was nothing about it which could not be considered genuine. The fact that the names had been corrected during the course of the judgment is a detail which would not have been included had the judgment been fabricated. The Respondent rejected this document merely because it was a photocopy but he submitted that the Tribunal was not bound by the same restriction. In any event he referred me to paragraph 32, where the judge had found that the original document had been received as an attachment to an email and therefore only a facsimile copy was available.
19. He further referred to the fact that it was the Appellant's account that the police had come looking for him but, as they had not been able to find him, they had taken his father into custody. I was referred to the medical evidence at pages 126 to 134, medical evidence supporting the Appellant's claim that his father had received medical treatment. He submitted that in the First-tier Tribunal there had been extensive documentary and video evidence in relation to the event in May 2011. Dr. Armbrust had corroborated the account. In summary he submitted that there was no reason not to accept the judgment.
20. In relation to whether the Appellant would be at risk on return and a victim of being persecuted, while he accepted Mr. Deller's concession, he also referred me to the objective evidence in the form of the expert report, in particular pages 81 to 84, and the Operational Guidance Note, in particular those parts relating to deficiencies in due process in Egypt and the problems with fair trial. He submitted that the Appellant's case was uniquely corroborated to the required standard of proof. He had been convicted in absentia and would not be subject to a fair trial. He would receive a fifteen year sentence merely for being present at a demonstration where the police had been humiliated.

Findings and Decision

21. I have carefully considered the judgment from the criminal court in Egypt. As stated by Mr. Eaton, in her decision the Respondent did not accept that the incident to which the judgment refers had taken place, or that the Appellant was involved. I have adopted the findings of the First-tier Tribunal in this respect, as was accepted by Mr. Deller. I find that the incident in May 2011 took place as claimed.
22. The Respondent's decision states that no weight is to be placed on the judgment as photocopies had been submitted [44]. I have carefully considered these photocopies. The fact in and of itself that I do not have the original document before me does not mean that I can place no weight

on it. The judgment refers to an incident which took place on 25 May 2011. I find that this judgment refers to the event described by the Appellant which, it is accepted, occurred.

23. In the indictment at the start of the judgment there is a reference to the Appellant. On the final page of the judgment it states that he is sentenced in absentia to fifteen years of imprisonment.
24. I have taken into account the evidence of the expert, Dr. Armbrust. I have considered his CV (pages 89 to 104). I find that he has wide-ranging experience in relation to Egypt and has published papers recently on the current position in Egypt. I do not intend to set out his report in detail here, but I find that I can rely on his report.
25. Dr. Armbrust is asked “Whether our client was sentenced to fifteen years in absentia for the incident” [6].

He states:

“The client is person number 9 in the list of the accused, [...]. The document clearly states that he was sentenced to fifteen years’ imprisonment in absentia. I surmise that the length of the sentence was due to the fact that he along with several others were never apprehended by the authorities. Those who were apprehended received sentences of a couple of years. The copy of the Arabic document in the Home Office bundle is not clear enough to check the accuracy of the translation but the translation in general seems competent, so I have no reason to doubt it.”

26. He is later asked: “Can you confirm whether the court document which confirms that our client was sentenced to fifteen years’ imprisonment is genuine?”[8]. He states:

“The document has official stamps on every page. The Appellant’s name is clear, and the document does say that his sentence is fifteen years in absentia.”

He goes on to state that, although he can find no independent reports on the verdict and that there are no media reports on the case, he has found that the official stamps appear on every page of the document.

27. I have taken into account the submission of Mr. Eaton that it is highly unlikely that a forged document would go to the effort of correcting the names listed at the start and end of the document. Equally, I find that if this was a fabricated document, it is highly likely that those who made it would ensure that the names at the start and at the end were the same. I have also taken into account that it has been accepted that the event to which the judgment refers took place as claimed.

28. At question 3 Dr. Armbrust is asked whether the Egyptian authorities' reaction to the event was serious and harsh. At the top of page 83 he states:

"In general the authorities always take seriously any challenge to the dominance of the police. The only thing the authorities were concerned with was the uprising by the townspeople against the police. This does not come in a vacuum."

29. At the end of page 83 he states:

"In summary, if the question is 'was the authorities' reaction to the event serious and harsh', then the answer is certainly yes. The reason for the harshness is inseparable from the revolutionary times, which put the state's security services on the defensive and spurred them to take revenge as a means of reasserting control. There is every reason to believe the Appellant's claim that the only 'evidence' the police had of his involvement in the incident was the statement of a police informer, and the statements of informers cannot be considered verifiable or credible."

30. I find that Dr. Armbrust's evidence is corroborative of the Appellant's account. He sets out clearly the reasons why the police would have reacted in this way, and why the Appellant would have received the sentence that he received.
31. Taking all of the above into account, and bearing in mind that Mr. Deller did not submit that this document could not be relied on, I find that this document is a reliable court document which shows that the Appellant has been convicted in Egypt in absentia to fifteen years' imprisonment as a result of being present at the event which took place in May 2011 in his village.
32. As I have found that there is a reasonable likelihood that the Appellant's account is true, and bearing in mind the acceptance by Mr. Deller that an appeal founded on these facts would succeed on asylum grounds, I find that the Appellant has shown that he is at risk on return to Egypt.
33. I have additionally taken into account the evidence referred to by Mr. Eaton. At [9] of his report Dr. Armbrust states that it is very likely that the Appellant would be on a detained list, and it would only be a matter of time before he was arrested if he were able to enter Egypt without being detained. At [10] he says that there would be no fair trial for the Appellant and it is more likely that he would be imprisoned on the basis of the trial that has already taken place. In answer to questions 11 and 12 he states that there is no protection for the Appellant and that relocation is not possible.

34. The Operational Guidance Note refers to the procedural deficiencies in the judiciary that deprive detainees of basic due process rights [1.2.4]. This is further expanded at paragraphs 2.8.6 and 2.8.8 in relation to due process violations in trials before the criminal courts.
35. Taking all of the above into account, I find that the Appellant has demonstrated that there is a real risk that he will suffer persecution on return to Egypt, and so his claim succeeds on asylum grounds. Following my finding in relation to his asylum claim, I find that he would also be at risk of treatment contrary to Articles 2 and 3 of the ECHR such as to put the United Kingdom in breach of its obligations. The appeal is therefore also allowed on human rights grounds.

Notice of Decision

36. The appeal is allowed on asylum grounds.
37. The appeal is allowed on human rights grounds.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 11 July 2017

Deputy Upper Tribunal Judge Chamberlain

TO THE RESPONDENT **FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 11 July 2017

Deputy Upper Tribunal Judge Chamberlain