



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

Appeal Number: PA/02433/2016

THE IMMIGRATION ACTS

**Heard at Birmingham Employment Decision & Reasons Promulgated
Centre**

On 6th October 2017

On 31st October 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**[M M]
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Paul Draycott (Counsel)

For the Respondent: Ms H Aboni (Senior HOPO)

DECISION AND REASONS

1. This was an appeal against a determination of First-tier Tribunal Judge Butler, promulgated on 29th March 2017, following a hearing at Birmingham on 26th January 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant

subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Egypt, and he was born on [] 1999. He is a minor. The essence of his claim is that when he was about 7 year old he was kidnapped by an unknown person who held him for two days and then returned him back to his family. He further states that this was the reason why his father possibly joined the Muslim Brotherhood, or alternatively that this was because after the uprising in 2011, the Muslim Brotherhood defended his village from escaped prisoners and he joined to help fight that cause. The Appellant also states that his father was an Imam at the local mosque and he led prayers there. His father was arrested and imprisoned. The Appellant was moved by his mother to Alexandria. He then travelled by boat to Italy. He came through France and he eventually applied for asylum in the UK and was interviewed on 3rd September 2015 and his substantive asylum interview was on 25th January 2016. In the UK, the Appellant also claims to have converted to Christianity during the course of 2016 and had attended church ceremonies of various denominations, before ultimately joining the Mormon Church.

The Judge's Determination

3. The judge prefaced the determination with the remarks that, "I have had regard to his age and to the fact that some of the events he referred to in his account allegedly happened when he was only 7 years old..." (paragraph 50). It was also noted by the judge that the Appellant was only 7 years old when he was allegedly kidnapped (paragraph 51). Nevertheless, the judge did not find the Appellant to be putting forward a credible account (paragraphs 52 to 57). There was also inconsistent evidence regarding the Appellant's date of birth (paragraph 58). The Appellant's evidence that he had approached the British Red Cross to try and trace his mother was also "entirely unconvincing" (paragraph 59). Accordingly, the judge concluded that the Appellant's account of his involvement with the Muslim Brotherhood and that of his father was untrue (paragraph 60).
4. In relation to the claim that he had converted to Christianity, the judge had regard to the fact that the Appellant attended a church as stated by Mr Sevit-Berridge who had said he went to the service with him and he confirmed this in his letter that he met two missionaries who also stated that the Appellant had been attending church every week from the end of October 2016 (paragraph 63). The judge observed how the Appellant was an intelligent young man who claims to have now converted to Christianity "some time after he received his refusal letter" (paragraph 66). The judge did not regard the claim of conversion to be plausible.

5. Finally, consideration was given by the judge to the Appellant's medical condition on the basis of two psychiatric reports prepared by Dr Vinod Kumar. It was observed by the judge that the essential difference in the two reports is that the second report by Dr Kumar changes the diagnosis from adjustment disorder to PTSD. The basis of this change is that at the time of the second interview with the Appellant, the Appellant "gave additional symptoms of nightmares and flashbacks that his symptoms overall were deteriorating rather than getting better" (paragraph 73). Consideration was thereafter given by the judge to this change of diagnosis by Dr Kumar (paragraphs 74 to 77). The account was, however, rejected.
6. With respect to Article 3 of the ECHR, the judge had regard to the high threshold in **N v SSHD** (paragraph 80) and observed that "there is no evidence in this appeal to suggest the Appellant has ever self-harmed" (paragraph 80).
7. The appeal was dismissed.

Grounds of Application

8. The grounds of application state that the judge erred in law in respect of the analysis of the psychiatric reports and failed to make proper findings in respect to them. It was also alleged that the judge did not give proper regard to the Appellant's mental health when assessing his credibility. Finally, it was said that the judge erred in considering the Appellant's conversion to Christianity.
9. On 9th August 2017, permission to appeal was granted.
10. On 5th September 2017, a Rule 24 response was entered by the Secretary of State to the effect that the judge had directed himself appropriately and there was no error of law.

Submissions

11. At the hearing before me Mr Draycott, appearing on behalf of the Appellant submitted that there were three essential errors that the judge made. First, that, in concluding that the Appellant's account was inconsistent in relation to the events described by him, and in stating that his account was vague and erratic, the judge failed to take into account that there was a Joint Presidential Guidance Note 2 of 2010 with respect to "child, vulnerable adult and sensitive Appellant guidance". Whereas it was a case that this Joint Presidential Guidance did not terms have to be expressly referred to nevertheless, there had to be recognition in the determination of the Appellant's status as a vulnerable or sensitive witness. This was not the case here.
12. Instead, the judge had blamed a minor Appellant in court for giving evidence that was erratic and vague, notwithstanding the fact this account

was based upon traumatic events in the life of the Appellant going back to his time as a 7 year old child in Egypt.

13. Second, the judge did not make an express finding that the Appellant was suffering from PTSD, even though this evidence was extensively related to by the judge from paragraphs 73 to 77. Instead, the judge had simply held that, “no objective evidence has been produced to suggest that the Appellant could not receive treatment for his mental health and emotional issues in Egypt” (paragraph 81).
14. Furthermore, in relation to the Appellant’s conversion to Christianity, the Appellant’s case was that this had occurred on a cumulative and holistic basis, and the judge made erroneous general findings in stating that the Appellant had failed to provide evidence of his visits to various churches (paragraph 61), and that he could not genuinely have converted to Christianity (paragraph 66).
15. Finally, it was not true that the Appellant did not present a suicide risk, if consideration was given to **JL (medical reports - credibility) China [2013] UKUT 00145**, because Dr Kumar’s clinical opinion was the Appellant, if returned to Egypt, would present a moderate to severe risk of suicide, due to CPN and at CAMHS assessing the Appellant on 7th November 2017.
16. For her part, Ms Aboni relied upon the Rule 24 response. She submitted that the judge had made perfectly adequate findings of fact. It was not insignificant that the judge had observed (at paragraph 66) that the Appellant was “an intelligent young man who claimed to have converted to Christianity some time after he received his refusal letter”. This was suggestive of the fact that the judge did not accept that the Appellant had not contrived to put forward a claim in order to succeed in his application for refugee asylum status. Second, it was not true that the judge had overlooked the joint Presidential Guidance for child and vulnerable adults. Mr Draycott had accepted that such a reference did not expressly be made to this guidance, and it was plain that the judge had begun from the premise that, “I have had regard to his age and to the fact that some of the events he referred to in his account allegedly happened when he was only 7 years old” (paragraph 50).
17. Finally, the fact here was that the Appellant had presented a highly inconsistent account in relation to all aspects of his claim (see paragraphs 58 to 61). There was no evidence ever presented that he had converted from Islam to Christianity. No one from the church came to give evidence on his behalf. He was not a genuine convert.
18. In reply, Mr Draycott submitted that there was no evidence that the Appellant’s protective status had been approached on the basis that there was recognition of his vulnerable and sensitive condition. There was also no finding that the Appellant suffered from PTSD. He asked that there be

a finding of an error of law and that the matter be remitted back to the First-tier Tribunal.

Error of Law

19. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. My reasons are as follows.
20. First, in what is otherwise a comprehensive and well-crafted determination, it remains the case that the judge did not approach the facts of this case on the basis of the Joint Presidential Guidance Note 2 of 2010 in relation to child, vulnerable adult and sensitive Appellant guidance. The recent case of **AM (Afghanistan) [2017] EWCA Civ 1123** is significant in this respect. On the facts of this case, there was evidence, which the judge carefully set out (at paragraphs 73 to 77) that the Appellant's diagnosis had been shifted from adjustment disorder to PTSD. The judge did not accept this observing that, "there is no explanation in the report for the Appellant's evidence as to why he failed to mention nightmares and flashbacks in his first interview with Dr Kumar" (paragraph 76). In fact, Dr Kumar had recorded (at paragraphs 16) that, "I asked him for the reason for not mentioning these last time when I saw him. He told me that this was because I did not ask him about it". On this basis, the appeal clearly ought to have been approached on the basis that the Appellant was a vulnerable witness. There is no reference to the fact that he is a vulnerable witness.
21. Second, despite the fact that the judge refers on at least three occasions (at paragraphs 73, 74, and 76) to the Appellant alleging to have PTSD, there is no express finding that the Appellant was indeed now suffering from PTSD. Yet, that was the medical opinion of Dr Vinod Kumar. The judge had to make a finding on this aspect, particularly given that the diagnosis had shifted from adjustment disorder to PTSD.
22. Third, there does appear to be some reference of the Appellant having suicidal ideation and the judge, however, wrongly concluded that, "there is no evidence in this appeal to suggest the Appellant has ever self-harmed", because the GP notes (at pages 110 to 111) that such a risk existed and there is additional evidence at page 83. The CPN at CAMHS assessment on 7th November 2016 had also concluded that there was a moderate to severe risk of suicide. For all these reasons, notwithstanding what is an otherwise clear and comprehensive determination, there is an error of law in this determination.

Notice of Decision

23. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is remitted back to

the First-tier Tribunal, to be heard by a judge other than Judge Butler on a de novo basis.

24. An Anonymity order is made.

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 their 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

Dated

Deputy Upper Tribunal Judge Juss

30th October 2017