Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09907/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 5th February 2019	**On 27th March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

[M N]
~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms E Harris, Counsel
For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Egypt born on 12th November 1981. The Appellant claims to have left Egypt on 27th March 2017 and to have travelled for work purposes to Kuwait by plane. After spending ten months in Kuwait the Appellant on 30th January 2018 travelled on his own Egyptian passport with valid visitor visa on a direct flight to Heathrow and claimed asylum on arrival. The Appellant's claim for asylum is based on his contention that he is a political activist and a member of the 6th April Movement, one of the opposition groups which campaigned for the overthrow of the Mubarak regime in 2011. In 2017 when he lost his job

and decided to leave Egypt, the Appellant took up an opportunity to work in Kuwait. Whilst in Kuwait he discovered that the authorities there had refused to renew his work visa and fearing that he would be sent back to Egypt he left for the UK claiming asylum. His fear of return is that he will be arrested on account of his political opinion.

2. The Appellant's application was refused by Notice of Refusal dated 30th July 2018. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Hanbury sitting at Taylor House on 12th September 2018. In a decision and reasons promulgated on 1st October 2018 the Appellant's appeal was dismissed on all grounds.

3. On 10th October 2018 Grounds of Appeal were lodged to the Upper Tribunal. Those grounds are extensive. On 10th October 2018 Judge Boyes refused permission to appeal. On 5th November 2018 renewed Grounds of Appeal were lodged to the Upper Tribunal. These would appear to mirror those that were lodged originally.

4. On 8th January 2019 Upper Tribunal Judge Coker granted permission to appeal. Judge Coker considered that it was arguable that the First-tier Tribunal Judge had failed to make reasoned findings and had failed to consider the evidence in the round. She noted that there were references in the decision to scepticism and doubt and that such references are arguably not reasons. Further, she considered that it was arguable that the First-tier Tribunal Judge did not have critical regard to the expert's report, the Appellant's sur place activity or risk on return.

5. On 21st January 2019 the Secretary of State responded to the Grounds of Appeal under Rule 24. Opposing the appeal, the Rule 24 response states that the judge considered the Appellant's asylum claim in respect of whether the documents and videos were all genuine and found that even if they were, the Appellant was not of interest to the authorities in either country.

6. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel, Ms Harris. Ms Harris is extremely familiar with this matter. She appeared before the First-tier Tribunal and she is the author of the Grounds of Appeal. The Secretary of State appears by her Home Office Presenting Officer, Mr Melvin.

Submission/Discussion

7. Ms Harris relies on her Grounds of Appeal. She acknowledges that they amount effectively to a skeleton argument and she does not wish to expand on them in any great detail, relying on them and pointing out that they are self-explanatory. She emphasises, however, that the judge has failed to make any credible findings and that it is not appropriate for a

judge not to make his own findings but merely to adopt those of the Secretary of State.

8. Ms Harris has attempted to shorten the proceedings before me by not verbatim reciting her Grounds of Appeal/skeleton argument. It is, however, perhaps appropriate to record the main thrust of those arguments within the Submission/Discussion section of this determination. Her first contention is that the First-tier Tribunal Judge has failed to conduct an assessment of the Appellant's credibility and that paragraph 17 onwards of the First-tier Tribunal Judge's decision purports to be the judge's findings when in fact very few findings are actually made and that paragraph 17 is a rehearsal of the Respondent's position and the First-tier Tribunal Judge does not go on to give reasons why he either agrees or disagrees with those arguments.

9. Ms Harris goes on to point out that whilst it is accepted and referred to by the judge that an asylum claim must be assessed to the lower standard of proof, when it comes to assessing the evidence the judge has materially erred in law by failing to apply it and that the standard of proof applied in this case places too high a burden on the Appellant.

10. Ms Harris in her skeleton points out the First-tier Tribunal Judge has accepted at paragraph 22 that there is no way that certain documents provided by the Appellant could be verified. She further contends that the judge has not set out clearly which documents he is referring to but in any event, if there is no way to verify them it is not explained why this is something to be held against the Appellant.

11. In addition, I note that there are further submissions made with regard to purported errors of law made by the judge highlighted as being co-operation between Kuwaiti and Egyptian authorities, the authorities' failure to cancel ID and driver's licence, and risk on return, all upon which she relies. In particular, she emphasises that at no point within the judge's decision are findings made about how significant a person's involvement would have to be in order to be at risk on return as a member of the April 6th Movement and that the judge has failed to carry out a critical assessment of the expert report of Dr Rebwar Fatah which evidences that since 2014 there has been an increased crackdown on dissidents.

12. Finally the judge, she submits, failed to make findings regarding the Appellant's sur place activities save to state that "even if these documents and videos are all genuine, I have concluded that that Appellant is not of interest to the authorities in either country". For all the above reasons she considers that there are substantial material errors of law in the decision and asked me to remit it back to the First-tier Tribunal for rehearing.

13. In response, Mr Melvin on behalf of the Secretary of State points out that there has been an acceptance by the Secretary of State that the Appellant was detained on two occasions but points out that if the authorities were

not interested in the Appellant then the question arises as to why he would be now. He submits that the findings made by the judge at paragraphs 17 to 22 are ones that were open to the judge, and that the findings made with regard to the Appellant's membership of the April 6th Movement are ones that the judge was perfectly entitled to reach. He points out that the Appellant was able to travel to Kuwait and that this is a factor that the judge was entitled to take into account. He agrees that in the event that I am against him in my assessment, then this appeal should be remitted back to the First-tier Tribunal for rehearing.

14. In brief response, Ms Harris comments that the findings of the judge at paragraph 21 are still based without reasons. She submits that the test must be on a lower standard and points out that the Appellant was detained for four hours on leaving Egypt and only released on the basis that he did not ever return. She further comments that it is not an issue extant before the Tribunal whether the Appellant can or cannot return to Kuwait.

The Law

15. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

16. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

17. I am satisfied on having heard the submissions of both legal representatives, having read the judgment and the Grounds of Appeal that the judge has failed to consider the evidence in the round and to make findings that are reasoned. I accept that a full and proper assessment of

the Appellant's credibility has not taken place and in reaching that conclusion, I take into account the findings made by the judge at paragraphs 17 to 21 inclusive. A proper approach to credibility requires an assessment of the evidence and of the general claim. In asylum claims relevant factors will be the internal consistency of the claim, the inherent implausibility of the claim, and the consistency of the claim with external factors of the sort typically found in country guidance. I accept that that analysis has not been fully applied in this particular case.

18. At paragraph 21 the judge has taken the Respondent's assessment of credibility and made findings about risk on return on that basis only. I accept that he has not made his own assessment of the Appellant's credibility, failed to make findings about any of the explanations given in the Appellant's witness statement or in oral evidence dealing with the issues raised by the Respondent, and does not make any findings to explain why certain aspects of the Appellant's account are accepted while others are rejected. I agree with the contention made in her written submissions by Ms Harris that it is necessary for the judge to give reasons why some aspects of the Appellant's evidence have been accepted and other aspects have been rejected. This failure to properly apply the assessment of credibility is an error of law and I find it to be material.

19. Turning to the issue of the standard of proof, the First-tier Tribunal Judge unfortunately refers to being sceptical with regard to the documents produced by the Appellant. I accept Ms Harris' submission that the judge is required to take account of and give weight to the evidence of the Appellant that the judge has failed to analyse, which evidence is probably in his view true and to give a detailed analysis of the evidence upon which the judge is purportedly sceptical. In such circumstances it is sustainable to contend that the judge has not applied, despite referring to it in his decision, the correct standard of proof.

20. Further, when considering the assessment of documents and video evidence the First-tier Tribunal Judge does appear to conflate the documents as being unverifiable with them being documents that can have no weight attached to them. I do accept that a document that cannot be verified might still be a document that can be relied upon in line with the principles set out in *Tanveer Ahmed*.

21. Finally, I accept that there does not appear to be at any point in the decision any findings made by the judge about how significant a person's involvement would have to be in order to be at risk on return as a member of the April 6th Movement. Also, the judge has not carried out any form of critical assessment of the expert's report. I acknowledge that the Appellant has been found to be involved with the April 6th Movement because he has been arrested for his involvement on two previous occasions and that it is appropriate that this element should have been considered further particularly alongside the expert's report.

22. Finally, the judge's consideration of the Appellant's sur place activities are scant in the extreme and findings made by the judge are minimal. I accept that the judge is not required to recite every piece of evidence but in an issue of this nature it would have been appropriate to do so.

23. Overall, there are consequently a number of errors of law particularly regarding the assessment of the Appellant's credibility. In such circumstances, I find the decision of the First-tier Tribunal Judge to be unsafe and I set aside the decision and remit the back to the First-tier Tribunal with appropriate directions.

Decision and Directions

On finding that the decision of the First-tier Tribunal Judge contains material errors of law:-

(1) The decision of the First-tier Tribunal Judge is set aside.

(2) The appeal is remitted to the First-tier Tribunal Judge sitting at Taylor House on the first available date 28 days hence with an ELH of three hours with none of the findings of fact to stand.

(3) That the appeal is to be before any Judge of the First-tier Tribunal with the exception of Immigration Judge Hanbury.

(4) That there be leave to either party to file and/or serve an up-to-date bundle of such subjective and/or objective evidence upon which they seek to rely at least seven days prior to the restored hearing.

(5) That an Arabic (North African) interpreter do attend the restored hearing.

No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application is made for a fee award and none is made.

Signed Date

Deputy Upper Tribunal Judge D N Harris