Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10134/2018

THE IMMIGRATION ACTS

Heard at Glasgow
On 26th April 2019

Decision & Reasons Promulgated
On 30th May 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

MR M I E A S
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Mr Wintor, Counsel, instructed by Maguire Solicitors, Glasgow
For the respondent: Mr M Mathews, Senior Presenting Officer.

DECISION AND REASONS

Introduction

1. The appellant is a national of Egypt, born in May 1996. He entered the United Kingdom in June 2017 on foot of a visit Visa. On 27 September 2017 he made an application for an EU residence card on the basis he was an extended family member of a European National exercising Treaty rights. This was refused in January 2018.

2. In February 2018 he made a claim for protection. This was refused in August 2018.In summary, his claim is that he is afraid of being returned to Egypt because of his actual or imputed political opinion. This related to his involvement with the Muslim Brotherhood.

3. He said since early childhood he had an association and in January 2011 he took part in the demonstrations against President Mubarak. When the Freedom and Justice Party was formed he helped at the demonstrations against the arrest of President Morsi.

4. In November 2016 he visited a friend in prison. One of the guards questioned him about his `uncle', his father's cousin, and his association with the Muslim Brotherhood. The guard became abusive and kicked him.

5. Then in December 2016 he was arrested at a checkpoint. He was held for 17 days when he was beaten and sexually assaulted. He said he was raped by one of his captors and an object was inserted into his anus.

6. He was arrested again in May 2017. He was released after 4 days after signing a paper which could incriminate him in the future.

7. He then obtained a visit Visa, coming here in June 2017. At the time his parents were in the United Kingdom visiting his brother who lived here. His parents subsequently returned to Egypt. They were visited by the security services and in February 2018 he learnt he had been sentenced to 5 years imprisonment in his absence.

8. The respondent refused his claim on the 6th of August 2018. It was not accepted he was facing a difficulties from the Egyptian authorities. His account was considered to be inconsistent with the country information which suggested, because of the massive support for the Muslim Brotherhood, only key figures would be targeted. The appellant had claimed to be a supporter rather than a member. The respondent observed he only made his claim after his application for a residence card had been refused. He was also able to leave the country freely.

9. A secondary aspect of his claim was a fear of military service. However the country information led the respondent to conclude that there are exemptions for medical conditions and the appellant said he suffered from Mediterranean fever. Furthermore, it was noted he had an Egyptian passport and was able to leave the country, suggesting he had either completed or was exempt from military service.

The First tier Tribunal

10. The appellant's appeal was heard before First-tier Tribunal Judge SPJ Buchanan at Glasgow on 23 November 2018.In a decision promulgated on 14 December 2018 it was dismissed. The judge set out the claim and at section 9 concluded it had not been established. The appellant's credibility was an issue.

11. The judge had been provided with medical evidence in support of the claim. There was a report from a clinical psychologist, Dr Fraser Morrison who saw the appellant on 7 September 2018. There were also reports from a Mr Crawford, a Consultant in A&E medicine, dated 17 September 2018 and the 12th October 2018.

The Upper Tribunal

12. Permission to appeal to the Upper Tribunal was granted on the basis arguably the judge erred in his approach towards the assessment of appellant's credibility and in particular, in the consideration of the medical report provided in relation to this.

13. In a rule 24 response dated 20 February 2019 the respondent opposed the appeal.

14. At hearing Mr Wintor adopted the grounds upon which permission had been granted. He submitted that the judge had reached a conclusion without taking the medical evidence into account and treated it as an add-on feature. He submitted that the judge did not properly factor in the mental health issues identified. This was relevant to the assessment of any inconsistencies as well as the reasons behind the delay in claiming. He submitted that the judge's approach to plausibility was flawed, for instance, in criticising the appellant at paragraph 9.34 for returning to university to sit his exams if he was genuinely in fear. I was referred to the decision of KB and AH (credibility - structured approach) Pakistan [2017] UKUT 00491.

15. KB and AH (credibility - structured approach) Pakistan said sufficiency of detail; internal consistency; external consistency; and plausibility, provide a helpful framework within which to conduct a credibility assessment. A more structured approach helps avoid the temptation to look at the evidence in a one-dimensional way. However, the indicators are merely indicators, not necessary conditions. They are not an exhaustive list. Credibility assessment is only part of evidence assessment.

16. I was also referred to the decision of AM (Afghanistan) -v- Secretary of State for the Home Department 2018 4 WLR 78 para 21. The Court of Appeal said findings of medical experts must be treated as part of the holistic assessment: they are not to be treated as an

"add-on" and rejected as a result of an adverse credibility assessment or finding made prior to and without regard to the medical evidence. Expert medical evidence can be critical in providing explanation for difficulties in giving a coherent and consistent account of past events and for identifying any relevant safeguards required to meet vulnerabilities that can lead to disadvantage in the determination process, for example in the ability to give oral testimony and under what conditions. An appellant's account of his fears and the assessment of his credibility must also be judged in the context of the known objective circumstances and practices of the state in question.

17. Mr Wintor referred me to specific aspects of section 9 of the decision where he sought to illustrate deficiencies. I was referred to sections 9.4, 9.5, 9.7, 9.8, 9.9, 9.19, 9.19, 9.20, 9.21 and 9.21.

18. In response, Mr. Mathews pointed out that this was a detailed determination in which the judge had given lengthy reasons for rejecting the appellant's claim. The decision of Mibanga (Francois) v Secretary of State for the Home Department [2005] EWCA Civ 367; [2005] INLR 377, paras 24–25 held that it was an error not to have regard to medical evidence submitted. The adjudicator there had rejected the claimant's evidence wholly and having reached her conclusion, had gone on to consider whether the expert evidence was capable of shifting her position. Had she fully considered the evidence of the reports she might have reached an alternative conclusion. Mr. Mathews said here the Tribunal did have regard to the medical evidence before reaching a conclusion. He submitted that the fact medical evidence maybe referred to at the end of a decision does not mean it was not taken into account.

19. He submitted the decision indicates the clear approach taken to all the evidence. The judge was entitled to emphasise the delay in seeking protection and the medical evidence submitted did not give any real explanation. It had been contended that the appellant's mental state may have explained a reluctance on his part to divulge information: this was different from explaining the delay. He submitted the tribunal is entitled to assess the appellant's claim and to reject his explanation for deficiencies.

Consideration

20. I turn to the details in the decision. Para 8.16 records the report from Mr Crawford (A&E) who formed the view that the appellant had "significant psychological symptoms causing severe emotional distress and the personal shame related to homosexual rape …". At 9.20 the judge records that the doctor stated that other causes of trauma might explain the scarring on his right shin though it was consistent with having been beaten. The appellant's toenails could not be attributed to trauma from avulsion as he claimed.

21. The report from the psychologist, Dr Morrison, is referred to at 8.37 as recording that he `presents with significant psychological symptoms of post-traumatic stress disorder'. At 9.1 B the judge records the doctor as stating, 'it is reasonable to assume that there may be inconsistencies in terms of the account of this time period'. At 9.4 there is reference to 'nightmares he experiences [in] a replay of the sexual assaults that were perpetrated against him'. At 9.5 the judge quotes from the report "… Mr [S] presents with difficulties with regards to providing a detailed account of the events he had experienced beyond the general level".

22. The judge then relates this evidence to the claim and raises credibility issues. At 9.1 the judge records that he is taking into account the opinion of the doctors about the appellant's recollection on the basis of the claimed abuse. However, at 9.2 the judge commented upon the appellant's delay in claiming protection. The judge sets out the chronology and concluded the appellant would have had a heightened awareness of the need to claim protection. However, he arrived in June 2017 but did not claim until February 2018. The judge concluded the delay in the circumstance damaged his credibility.

23. At 9.3 the judge commented about the appellant going back to the University after his claimed detention. The appellant's explanation was that he wanted to complete his studies but the judge was not convinced of this explanation for him remaining behind. At 9.4 the judge goes into more detail on this point and points out that the psychologist does not explain this. The judge expressed the opinion that if the appellant had suffered the trauma claimed he was likely to have made urgent arrangements to leave the country and claim protection at an early opportunity. Clearly his failure to do so was taken as a credibility point.

24. At 9.5 the judge refers to the psychologist referring to the appellant's inability to provide a detailed account of events. However, this was not consistent with the detailed statement provided by the appellant.

25. At 9.19 the judge observes that the history given to Mr Crawford did not coincide with the details in the statements provided by the appellant. The judge gave examples such as the guard hitting him on the neck and of being stopped at the checkpoint on the way home from prison rather than sometime later. The judge goes into the details of the discrepancies. The judge acknowledged the possibility his mental health could affect his recollection but was unable to reconcile this explanation with the discrepancies noted. At 9.20 the judge focused upon the appellant's claim that his toenails had been pulled out. This was not supported by the doctor. The judge felt this was a significant factor against the claim of torture. The judge was comparing the medical evidence with the

appellant's claim and it was not being treated as something to be summarised after a conclusion had already been reached.

26. At 9.21 the judge refers to the Mr Crawford acknowledging that an assessment of the appellant's mental health and psychology was outside his area of expertise. At 9.22 the judge referred to Dr Morrison's report and the reference to the appellant meeting the diagnostic criteria for post-traumatic stress disorder. The judge acknowledged the opinion supported the conclusion he has suffered trauma but refers to the inconsistencies in the appellant's account. The judge pointed out that third-party sources of evidence would be particularly relevant.

27. The judge also looks at wider factors in the assessment of the credibility of the appellant. The appellant had produced a membership card for the Freedom and Justice party which he said belonged to his father's cousin. The judge questions how he came to produce this in light of the appellant's account about the lack of contact with his family in the United Kingdom for some time.

28. The judge then refers to the evidence about his friend he claimed he visited in prison. It is set out at 9.9. The judge refers to a lack of detail and questions why he would agree to allowing this person's brother live with them if he was fearful of being associated.

29. The judge referred to the absence of third-party evidence. At 9.12 the judge refers to the claimed involvement of a lawyer to secure the appellant's release. However there was an absence of evidence of this as well as a lack of evidence about his being sentenced in absentia.

30. In summary, I find the judge has carefully considered all the evidence and looked at matters in the round. The decision is detailed and in context. The structure of the decision clearly shows the medical evidence was not treated simply as supplementary. Rather, the judge analysed the medical evidence in relation to the claim. The judge also looked at wider matters, such as inconsistencies between the history given in the claim and that told to the doctors and the lack of third-party support. The judge acknowledged there was no requirement for corroborative evidence. The judge referred to the appellant's delay in claiming. I find these were features the judge was legitimately entitled to have regard to. In conclusion, I find no material error of law established.

Decision.

No material error of law has been demonstrated in the decision of First-tier Tribunal Judge SPJ Buchanan.Consequently, that decision dismissing the appellant's appeal shall stand.

Deputy Upper Tribunal Judge Farrelly.

26th May 2019