



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

Appeal Number: PA/10551/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 22 August 2019**

**Decision & Reasons Promulgated
On 5 September 2019**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

KSMM
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Nadeem, legal representative, Kingswright Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge J L Bristow, promulgated on 7 May 2019. Permission to appeal was granted by First-tier Tribunal Judge Pedro on 10 June 2019.

Anonymity

2. Such a direction has been made previously and is repeated below as this is a protection matter.

Background

3. The appellant entered the United Kingdom on 7 February 2018 as a business visitor. On 12 August 2018, he applied for asylum. The basis of that claim was that the appellant began to support the Muslim Brotherhood (MB) in 2011, his brothers already being members. The appellant demonstrated his support of MB by hanging an MB banner outside of his home, encouraging others to join and attending MB gatherings in a public place. During 2011, the appellant became involved with an organisation supported by MB, called the Knights or Future Warriors. The appellant and his family members began to have problems with the Egyptian authorities from late 2013 onwards which led to the death of his father; the detention of the appellant's nephew as well as the detention and torture of the appellant during 2017. The appellant avoided further problems after his release until he left the country. Since arriving in the United Kingdom, the appellant continued to support MB and took part in an anti-government demonstration on 1 July 2018. He fears that he will be persecuted if he returns to Egypt.
4. The asylum claim was refused by way of a letter dated 20 August 2018. The Secretary of State rejected the appellant's claimed involvement as well as that of his family with MB because he failed to mention it in his screening interview. The respondent also considered the appellant's reasons for supporting MB were unclear and vague. It was not accepted that the Knights or Future Warriors were associated with MB owing to a lack of evidence of this. There were also said to be a number of inconsistencies within the appellant's account, it was not accepted that he would have been released from custody and permitted to leave the country if he was of interest and it was said that he did not know who the current leader of MB was.

The hearing before the First-tier Tribunal

5. At the hearing before the First-tier Tribunal, the appellant and a witness Mr A gave evidence. The judge considered the appellant's failure to mention MB during his screening interview damaged the credibility of his subsequent account. He also made a number of other negative credibility findings. The judge found the documentary evidence of the deaths of the appellant's relatives to be unreliable and was not satisfied that the appellant was associated with MB or of interest to the Egyptian authorities. The appellant's Article 8 claim outside the Rules was also dismissed.

The grounds of appeal

6. The grounds of appeal made the following points:
 - the judge's treatment of the screening interview was unfair and did not take into consideration the appellant's mental state at the time.

- it was unfair of the judge not to raise his concerns about the death certificates during the hearing, regarding which the appellant had a plausible explanation.
 - there was no explanation as to why the appellant was not accepted to be a victim of torture.
 - the appellant was not given an opportunity to explain why he had not left Egypt promptly after his visa was issued.
 - the judge had not taken into consideration the complete report in the CPIN which indicated that some wanted persons had been able to leave Egypt without incident.
 - the judge failed to consider the risk to the appellant as a result of the very high-profile activities of his brother in Turkey, evidence of which was contained in the appellant's bundle.
 - the judge failed to deal with the appellant's sur place claim when assessing risk on return.
7. Permission to appeal was granted on the basis sought.
8. The respondent's Rule 24 response, received on 2 July 2018, indicated that the appeal was opposed. The judge's findings were robustly defended. Furthermore, it was argued that there was no sur place claim before the judge.

The hearing

9. Mr Nadeem was invited to make his submissions, however he declined to do so stating that he had nothing to add to the grounds.
10. Mr Melvin relied on the respondent's Rule 24 response. Addressing the appellant's lack of mention of his claimed affiliation with MB at the screening interview, he emphasised that this was not an interview which took place just after an arrest but where the appellant had attended the screening centre some weeks after his arrival. The appellant was a well-educated man who could articulate his claim and the judge was entitled to look at this omission. Regarding the mention in the grounds of psychological issues which were said to affect the appellant's concentration, the judge had noted a lack of expert medical evidence of PTSD or other mental health issues. In relation to the evidence regarding the appellant's nephew, Mr Melvin contended that at [40] the judge did not make a credibility finding but an assessment of the evidence and it was difficult to see what turned on this point.
11. Mr Melvin addressed paragraph 5 of the grounds, arguing that the judge had made detailed adverse findings regarding the death certificates of the appellant's three brothers at [41-43] which were open to him. He asked me to note that there was no expert evidence as to provenance of those documents and there was no skeleton argument, statement or submissions on file. He argued the judge was entitled to make findings on

the translated documents. A key issue noted by the judge was that the appellant's mother had three different dates of birth in the death certificates. Mr Melvin asked me to note that the grounds did not highlight a plausible explanation and there was no evidence of any explanation being made to the judge.

12. Addressing paragraph 7 of the grounds, Mr Melvin submitted that there was no acceptance by the judge at [45] that the appellant was a victim of torture as claimed. There was no expert evidence before the judge, who was entitled to find that the appellant was depressed because he was separated from his family and that he was suffering from medical problems.
13. Mr Melvin argued that the judge's findings at [46] regarding the appellant's delay in departure was an obvious point which he was entitled to rely on.
14. On paragraph 9 of the grounds, which criticised the judge's findings as to the ease with which the appellant left Egypt, Mr Melvin noted that this was a point also raised in the decision letter. He argued that the appellant had produced no evidence to support his assertion that he would be sought by the Egyptian authorities.
15. Taking paragraphs 10 and 11 of the grounds together, Mr Melvin argued that there was no evidence before the judge that the appellant's family in Egypt, extended or immediate, have recently suffered adversely from his brother's criticism of the Egyptian authorities. He contended that this spoke volumes about whether the appellant would be at risk. Nor was there any harassment of the appellant's family owing to his own association with MB or claimed sur place activities. Mr Melvin described the evidence of the appellant's claimed sur place activities contained at pages 61-73 of the appellant's bundle as merely photographs of the appellant and others standing outside of a branch of Waterstones with banners. He argued that, otherwise, there was very little in the evidence, no attendance by a witness of any of the organisations the appellant claimed to be associated with and nothing in the evidence to show that Egyptians were being monitored by their embassy. He asked me to uphold the judge's decision.
16. In response, Mr Nadeem argued that the presenting officer at the hearing raised no concerns regarding the death certificates, asked no questions relating to them and neither had the judge raised any concerns. The documents had not been before the respondent previously and as such there were no concerns raised in the decision letter. He was not willing to indicate what the appellant's explanation might be, as this was a matter of evidence. The error was material because the death certificates went to the core of the appellant's claim, that being that his brothers were killed owing to their membership of MB. Similarly, the judge relied on the issue of the appellant's delay in leaving Egypt but no questions had been asked regarding this and there were no submissions on this point. The appellant

had no opportunity to explain. Mr Nadeem argued that a further material error was the judge's treatment of the appellant's ability to leave Egypt on his own passport which took no account of the objective evidence (the respondent's CPIN) to which he referred the judge during the hearing. Those submissions were that the respondent was selective in the parts of the CPIN relied upon and that not every opponent of the Egyptian regime was put on a wanted list.

17. Mr Nadeem argued that the appellant's brother, M departed for Turkey and had since become a high-profile opponent of the Egyptian government on his YouTube channel. Referring to pages 8-64 of the appellant's second subjective bundle, Mr Nadeem argued that there was a failure by the judge to state whether he accepted this evidence. Despite claiming to have made detailed submissions to the First-tier Tribunal, Mr Nadeem was unable to point me to any evidence indicating whether the family members of opponents are targeted by the Egyptian authorities nor whether the Egyptian government monitors Egyptian citizens in the diaspora.
18. Mr Nadeem turned to the medical evidence which was before the judge which consisted of a GP's patient summary. He argued that the judge accepted the appellant was suffering from depression on the basis of this document, however this evidence also pointed to the appellant being a victim of torture. Mr Nadeem added that a full medical report had not been obtained because the appellant was unwilling to continue to talk about the torture he suffered and had struggled with this part of his evidence during the hearing. The evidence of the appellant's mental state mitigated his failure to mention MB at his screening interview.
19. Mr Melvin reiterated that the judge was entitled to expect expert evidence of scarring and PTSD. In response, Mr Nadeem emphasised that the summary described the appellant as a victim of torture and that there was no assessment of this.
20. I reserved my decision at the end of the hearing as I was not content to proceed without having had an opportunity to go through the evidence which was before the judge in more detail. I would add that I was unimpressed with Mr Nadeem's submissions and his unwillingness to point me to relevant evidence or indicate if it did not exist.

Decision on error of law

21. The first issue raised in the grounds was the judge's consideration of the appellant's failure to mention MB during his screening interview. The grounds are correct in stating that there was no consideration of the appellant's mental state at the time. Having perused the screening interview, it is correct to state that MB was not mentioned in response to the question 5.5, "Have you ever been involved with any... groups?", however, as the appellant says in his witness statement, he otherwise gave an overview of his claim which was consistent with what he later

stated, including that he is against what is happening in his country, against the Egyptian government and that he was detained because of those views. The screening interview took place on 23 February 2018 and the appellant was assessed by his GP on 18 April 2018 with no interpreter. That assessment included a physical examination and discussion of the appellant's claim to be a victim of torture. The appellant was seen again in July 2018, with an interpreter and gave a detailed account of his ill-treatment and his mental state. He was observed to be hyperventilating and clenching his fists as he recounted his problems. The doctor recorded that the appellant reported experiencing a number of mental health symptoms since 2017 including low mood and trouble concentrating on things. He was prescribed citalopram. This appointment predated the appellant's substantive asylum interview and the negative decision and was at a time when the appellant did not know that he would be criticised for not mentioning MB during his screening interview. Given that the appellant's attendance at his GP was not prompted by any major development in his asylum case and the mental health concerns predate his departure from Egypt, the judge ought to have considered this evidence in deciding whether the appellant's credibility was damaged and materially erred in not doing so.

22. The judge identified concerns as to the reliability of the three death certificates which were said to relate to the appellant's brothers. The judge makes what appear to be sustainable points at [41-43] of the decision. Yet, at [41] he states that he '*can find no other reasonable interpretation of this document...*' Mr Nadeem bordered on giving evidence in stating that neither the presenting officer nor the judge raised any concerns with the death certificates during the hearing, however Mr Melvin did not refer me to any evidence to the contrary. Accepting that the respondent made no criticism of these documents during the hearing, it was unfair of the judge to reach negative findings without giving the appellant or his representative an opportunity to address his concerns. I am told that the appellant would have been able to plausibly do so.
23. As to the issue of whether the appellant was a victim of torture, the judge rightly notes the absence of an expert report on the same. After making many credibility findings, both positive and negative [34-44], the judge turned his attention to the medical records, noting that reference was made to "severe torture." At [45], the judge does not assess that evidence and come to any conclusion about it either way. By contrast, the judge accepted the same GP records as evidence that the appellant suffered from depression.
24. The GP's notes record a detailed account of the torture the appellant stated he experienced, that account was given at his second appointment when he had access to an interpreter. The records also include a diagram showing the sites of scarring, which was produced following the first appointment. In addition, the record of the doctor's observation of the appellant's mental state when describing the torture paints a vivid picture. While a detailed medical report would have been preferable, the evidence

of torture which was before the judge was worthy of some assessment and that assessment ought to have taken place prior to the judge reaching his conclusion that the appellant's account of his arrest and his detention was not credible at [44].

25. The judge found against the appellant for not leaving Egypt until a month after his visa was issued [46]. This was a point not taken in the decision letter and I am told that this point was not taken by the presenting officer or raised by the judge during the hearing. Mr Melvin did not submit otherwise. In these circumstances, it was unfair for the judge to deprive the appellant of the opportunity to address the delay.
26. The judge found that it was not credible that the appellant would have been able to leave Egypt if he was of adverse interest and suspected of supporting MB. Mr Nadeem argued that extracts of the Egypt CPIN were referred to the judge. I am satisfied that this material, which can be found in the appellant's bundle of objective evidence, was before the judge. Of particular relevance is 8.1.1 - where it is stated that not all those wanted have their names placed on the list and that there have been "*numerous cases where a person facing trial had had his or her name removed from the list, and subsequently travelled abroad without incident.*" The judge erred in reaching the conclusion he did, without any assessment of the relevant parts of the CPIN.
27. The appellant submitted a second bundle of subjective material for his appeal which consisted of his witness statement as well as over seventy pages of material mainly relating to the activities of his brother, M who lives in Turkey. At this juncture, it is relevant that the appellant's witness, Mr A, confirmed the high profile of the appellant's brother in MB and that there were photographs and identity documents of the witness, the appellant's brother and evidence of the relationship between the appellant and his brother in the form of a family book. I could find no assessment by the judge of the evidence relating to the appellant's brother or indeed of the evidence of Mr A regarding the brother. The appellant's fear of ill-treatment as a result of his brother's activities is a significant aspect of his case and this is a clear error. Mr Nadeem did not point me to any evidence that the relatives of MB members could be at risk. Given the anxious scrutiny which protection cases are due, I have examined the evidence for myself. There are references to tens of thousands of MB supporters being detained at any one time and particularly at 6..2.21 of the CPIN on the Muslim Brotherhood the following is recorded from a DFAT report 2017, "*... those with family links to members face a lower risk of being targeted for arrest, but may be subject to arbitrary arrest during wider security actions. They are likely to come under the close attention of authorities and be subject to surveillance and monitoring of their activities.*" The latter quote is also relevant to the appellant's claimed sur place activities, about which there were no findings by the judge. Given the background evidence of the risk to and surveillance of relatives of MB members, the judge's failure to consider whether the appellant would be at risk of

persecution on this basis or owing to his sur place activities, evidence of which was before the judge, also amounted to material errors of law.

28. In view of the foregoing material errors of law, the decision of the First-tier Tribunal is set aside in its entirety.
29. While mindful of Statement 7 of the Senior President's Practice Statements of 10 February 2010, it is the case that the appellant has yet to have an adequate consideration of important aspects of his protection claim at the First-tier Tribunal and it would be unfair to deprive him of such consideration. Therefore, this matter will be remitted to the First-tier Tribunal for a fresh hearing, with no findings preserved.
30. Owing to the standard of the appellant's representation before the Upper Tribunal, I would urge Kingswright Solicitors to consider instructing counsel to review the evidence, provide an opinion and to represent the appellant at the de novo hearing of this appeal.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Birmingham IAC, with a time estimate of one day by any judge except First-tier Tribunal Judge Bristow.

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

Date 05 November 2019

Upper Tribunal Judge Kamara