



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03806/2019

THE IMMIGRATION ACTS

Heard at Field House
On 19 December 2019

Decision & Reasons Promulgated
On 13 January 2020

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AFMB

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Ms K Bassi, Presenting Officer

For the Respondent: Ms E Griffiths, Counsel instructed by Turpin & Miller LLP
(Oxford)

DECISION AND REASONS

I make an order for anonymity pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting disclosure of any matter that may lead to the identification of the respondent and other parties to these proceedings. Any breach may lead to contempt proceedings.

1. The Secretary of State appeals with permission the decision of First-tier Tribunal Judge Juss, who for reasons given in his decision dated 17 October 2019, allowed the

respondent's appeal on human rights grounds against the Secretary of State's decision refusing his protection and human rights claims.

2. The respondent is a citizen of Egypt where he was born in 2001. He claims to have arrived in the United Kingdom clandestinely in January 2015.

3. The judge explained the respondent's claim as follows, in [4] of his decision:

"4. The essence of the appellants claim is that he lived with his parents and siblings. His father was a farmer. His mother was a housewife. His father became sick and passed away. His mother then made him leave Egypt and paid for someone to arrange the journey. Neither he nor his family had any specific problems in Egypt. He left because of the general situation whereby 'people were dying and you wanted to be safe' (RL at §17)"

4. The respondent gave evidence before the judge. The Secretary of State was not represented. Evidence was also given by a social worker.

5. The judge considered that there were two issues to be decided. The first related to the respondent's asylum claim but concluded that the evidence did not demonstrate that he would be at risk of persecution. The second related to the human rights aspect of the claim which the judge explained at [20] as follows:

"20. The second issue in this appeal, however, is whether the Appellant can succeed on human rights grounds. His background is that, 'I left when I was 11' (see his Rebuttal Witness Statement at §1). He has no extended family left (§2). His mental health, as confirmed by the Expert, has suffered hugely 'from the loss of my family' (§5). The effect of removing him, he claims, would be damaging to his mental health (§7). Since he left Egypt aged 11 years he has not been back in the 7-years since (§8). In his Witness Statement, dated 4th April 2019 (at p.6) he states that his Uncle, *Hamid* was in contact with him when he first arrived here but he is now dead (§20). He has a brother, *Hani*, in Germany with whom he is in contact (§5). However, whereas the Appellant's own narrative is the starting point it is not the end point. I have to consider what the Experts say as well.

6. The judge referred to the case of *M-W (A Child) Re* [2010] EWCA Civ 12, at [21] as follows:

"This is because in **M-W (A Child), Re [2010] EWCA Civ 12** Wall LJ explained (at para 39) that:

"I regard the following as trite propositions of law:

- (1) Experts do not decide cases. Judges do. The expert's function is to advise the judge;
- (2) The judge is fully entitled to accept or reject expert opinion;
- (3) If the judge decides to reject an expert's advice, he or she (a) must have a sound basis upon which to do so and (b) must explain why the advice is being rejected.

- (4) Similar considerations arise when a judge prefers one expert's evidence to that of another. Judges must explain why they prefer the evidence of A to that of B."

7. After referring to *M-W (A Child) Re* [2010] EWCA Civ 12, the judge explained at [22]:

"22. Accordingly, if I decide to reject an expert's advice I (a) must have a sound basis upon which to do so; and I (b) must explain why the advice is being rejected. I have considered this Advice in the Expert's Reports and I cannot conclude that it can be rejected. The Appellant has by all accounts had a very tumultuous upbringing during which he has seen the loss of his parents. He has an uncle but his evidence is that he has in the past 7-years, since he arrived in the UK, passed away. The Appellant has not had any stability in his life apart from what he has attained now in the UK. The evidence before me shows that any risk of disruption to that stability will have dire consequences for the Appellant's well-being. This is for the following reasons."

8. Thereafter the judge referred to reports by Helena Cullen of Asylum Welcome and Emma-Penny-Larter, the latter having given evidence before him. Additionally, he referred to a psychiatric report by Dr Robert Cornish. Helena Cullen had observed the respondent suffered untreated complex post-traumatic stress disorder and multiple unresolved griefs. Ms Penny-Larter had observed that Social Services had identified the respondent as a young person in need of extra support and that he had made very close friendships, bonds and social networks in the United Kingdom, so having to leave could make him feel lonely and isolated. Dr Cornish referred to the respondent's asthma and use of cannabis and concluded that he should be offered on-going treatment as to the latter. Dr Cornish also diagnosed the respondent as having significant mental health difficulties. Evidence before the judge also included a report by the respondent's treating psychologist Sushila Dhall, who is a psycho-therapist.

9. Although accepting it was arguable there was no reason why such support should not be available on return to Egypt the judge explained at [25]:

"25. ... Whereas it is arguable that there is no reason why such support should not be available to him upon return to Egypt, the fact is that he has no one there now and he is a vulnerable individual. In fact, I find to be decisive in this regard the Psychiatric Report by Dr Robert Cornish (pp 10-26). This is quite clear that the Appellant 'suffers from post-traumatic stress disorder', and 'should be offered ongoing treatment in support' and that 'his mental health is likely to be negatively impacted by a return to Egypt ...' (at pp. 25-26). On this view he cannot reasonably be returned to Egypt."

10. At [26] and [27] he went on to explain:

"26. The Appellant accordingly succeeds on Article 8 grounds. The protection of these rights is principally now contained in Para 276ADE of HC 395 (as amended). The relevant rules require that a claimant has spent 20-years in the UK. This not the case with this Appellant. Accordingly, the Rules are not met. However, there is an alternative basis to the application of Para

276ADE which is that there are “very significant obstacles to the applicant’s integration into the country to which he would have to go.” In this case the Appellant speaks the relevant language of his country of origin and has continuing family connections and contacts there. There is nothing to suggest that he has lost all ties there. I do not accept that he has lost all contact as he claims, not least given that with all the modern means of communications and the internet it is quite inconceivable that he would lose contact.

27. I direct myself however on the basis of the CA decision in **Kamara [2016] EWCA Civ 813**, where it was explained that the concept of ‘integration’ is one which “is a broad one” because “it is not confined to mere ability to find a job or sustain life while living in the other country.” Instead, the term ‘integration’ is one which “calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have reasonable opportunity to be accepted there” (para 14). I am not satisfied that the Appellant given what the expert opinion about him states, has ‘a capacity to participate in it’ when one considers his return to Egypt and the traumatic childhood that he has had. The Expert evidence shows that life in the UK is the only stability that the Appellant has known and that he ‘is a young man at high risk of a complete and catastrophic breakdown’ because ‘he suffers untreated complex Post-traumatic Stress Disorder and multiple unresolved griefs.’”

Accordingly, the judge concluded the respondent succeeded on Article 8 grounds.

11. In [28] he explained:

“28. If one were to consider additionally, the position outside the immigration rules, it is plain that on the basis of the decision in **Agyarko [2017] UKSC 1** there will be ‘unjustifiably harsh consequences’ to the Appellant, for the reasons I have already identified above, if he were to [be] returned to Egypt now.”

12. The ground of challenge contends that the judge had erred by reference to procedural irregularity and inadequate reasoning. It is also contended the judge had not made any assessment of the material issue as to the feasibility of return in respect to the Article 8 claim. It is argued that the decision is insufficiently reasoned and without the requisite anxious scrutiny. It is also argued that it would have been entirely prudent and reasonable to adjourn the hearing so that the Secretary of State could challenge the reports in evidence, and the failure to adjourn had resulted in a decision which was not based on the consideration of all the relevant evidence in the round and was procedurally unfair. That failure was against the public interest to ensure fairness in proceedings.
13. The grounds continue with the assertion that the judge had simply accepted the respondent’s claim that his parents and uncle had died without evidence or further scrutiny. The Article 8 reasoning was flawed as being insufficiently reasoned and did not justify either the exceptionality or proportionality factors. It was clear that

the respondent had been sent to the United Kingdom for economic benefit rather than any genuine risk, harm of destitution in Egypt.

14. A detailed response pursuant to rule 24 has been lodged by the respondent's representatives. It is contended that the ground based on procedural unfairness, being the failure to adjourn, had no merit. There was no suggestion that the Secretary of State was not aware of the hearing or that he had made any application to adjourn it. He was not therefore deprived of an opportunity to cross-examine or challenge the evidence.
15. As to the challenge based on the weight given to the experts' reports the response argues that the judge was entitled to treat them as unchallenged and cannot be criticised for making his findings. In any event it is contended that the substance of the complaints are not made out. The experts' qualifications to give their opinions were each set out in each of their respective reports and letters and they complied with the Senior President's Practice Direction 10. Dr Cornish had not exceeded his remit. The suggestion by the Secretary of State that the Tribunal should have carried out a general search via the internet before reaching its decision would itself have been procedurally irregular. There was no evidential foundation for the allegation of bias by the experts or professionals.
16. As to the acceptance of the respondent's evidence, it is argued that the appropriate forum for challenging that evidence was the First-tier Tribunal which the Secretary of State had not attended. It was open to the judge to accept the respondent's claim as regards his parents and uncle's death. As to the assertion of insufficient reasons it is submitted that the findings are clear and that the grounds in this respect amount to no more than a disagreement and were a clear attempt to argue the case. Having allowed the appeal in accordance with paragraph 276ADE(1)(vi), the Rules reflected the position where the Secretary of State considered the proportionality balance lay.
17. Finally, it is contended in the response, that the judge was in any event wrong to find that the respondent had family with whom he was in contact in Egypt. Permission to argue this was not sought and was unnecessary in accordance with the overriding objective as it conferred no material benefit for the respondent in the light of the outcome in the appeal.
18. At the outset of the hearing before me today, Ms Bassi clarified that the Secretary of State did not rely on the ground of challenge based on a failure by the judge to adjourn the hearing. She confirmed that the scope of the challenge, being that the evidence did not support the conclusions reached, Ms Bassi clarified that the challenge was not a perversity one. As a consequence, the enquiry before me is to see whether there was evidential support for the findings reached.
19. I am grateful to Ms Bassi and Ms Griffiths for their assistance in my examination of the range of evidence in this case, including the medical evidence and the sources of material on which in particular Dr Cornish and Ms Dhall relied.

20. I have considered carefully the submissions from both parties as to the correctness of the judge's approach to family ties and contact. It appears to be accepted that the respondent has two surviving sisters in Egypt. There was no evidence before the judge of the respondent being in contact with those sisters. The judge did not decide that by reference to any evidence of contact but reached his conclusion based on reference to in effect social media, and that it was inconceivable contact would be lost.
21. In my judgment the focus needs to be on [27] of the judge's decision as it is here that he reaches the conclusion which led to the outcome of this appeal. In explaining that he was not satisfied by reference to a citation from *Kamara* the respondent had capacity to participate in life in Egypt if returned. There is no suggestion that the judge had misunderstood the evidence of Dr Cornish and Ms Dhall who explained in considerable detail the bleak prospects and difficulties that the respondent would face on return. I am not persuaded that either exceeded their remit as it was reasonable for them to infer from their views on the respondent's mental health the difficulties they apprehended he would face and the obstacles that would be caused by his behavioural and mental health difficulties. The reasoning by the judge, it has to be said, is brief, and the detail in the reports of Dr Cornish and Ms Dhall might have been given more coverage. Nevertheless, it is unarguable that having regard to the diagnosis by Dr Cornish that the respondent has real difficulties which would pose obstacles on his reintegration into Egypt which he left at a young age, at the outset of his teenage years.
22. Whilst it may be that had the Secretary of State been represented before the judge a different conclusion might have been urged or on the same material another judge might reach a different conclusion. Nevertheless, I am not satisfied there was not evidential support for the conclusion reached by the judge as to the potentiality of the respondent's reintegration into life in Egypt. The judge understood the evidence and that included the presence in Egypt of family members. The brevity of the judge's reasoning in the circumstances of this case does not persuade me that that is an error. I am persuaded that the judge did not err in his decision in allowing this appeal by reference to paragraph 276ADE(1)(vi), and for these reasons this appeal by the Secretary of State is dismissed.

NOTICE OF DECISION

The appeal by the Secretary of State is dismissed.

Signed

Date 23 December 2019

UTJ Dawson

Upper Tribunal Judge Dawson