



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

**Appeal Number: UI-2023-001785
First Tier Number: PA/52595/2022**

THE IMMIGRATION ACTS

**Heard in Edinburgh
On 6 March 2024**

Decision & Reasons Promulgated

On 20th of March 2024

Before

UPPER TRIBUNAL JUDGE MACLEMAN
UPPER TRIBUNAL JUDGE PITT

Between

MOHE
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr S Winter, Advocate, instructed by Rea Law

For the respondent: Mr A Mullen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Byrne issued on 4 April 2023 which refused the appellant's appeal against a refusal of a protection and human rights claim.
2. The appellant is a national of Egypt and was born on 21 February 1974.
3. The appellant came to the UK on 18 April 2018 on a visit visa. He claimed asylum on 4 September 2018. His claim was refused and his appeal to the

First-tier Tribunal (FtT) was refused by FtT Clapham in a decision issued on 6 September 2019.

4. The appellant made further submissions on 22 October 2021. In a decision dated 23 June 2022 the respondent refused the asylum and human rights claim but found that the appellant was entitled to a further right of appeal. The appeal was heard by FtT Byrne who refused it in the decision issued on 4 April 2023. The FtT refused permission to appeal on 9 May 2023. Upper Tribunal (UT) Judge Jackson granted permission on 22 June 2023.
5. The chronology set out above shows that this was an appeal which required the application of Devaseelan (Second Appeals – ECHR – Extra-Territorial Effect) Sri Lanka* [2002] UKIAT 00702. As identified correctly in paragraph 44 of the decision, the findings of Judge Clapham were the starting point for the findings of Judge Byrne.
6. There was agreement before us that the approach taken to the new material and to the Devaseelan guidelines in paragraphs 47 to 52 of the FtT decision amounted to an error on a point of law. Firstly, having found shortcomings in some of the appellant's new documents as a result of comments made by the country expert, Dr George, the First-tier Tribunal indicated in paragraph 52 that those shortcomings were such that no reliance could be placed on other new materials relied on by the appellant. This was an incorrect approach to the assessment of credibility and to the weight that could be attached to the other new materials. They could not be found to be of no probative value without some assessment of their merits. Secondly, the further evidence was potentially material, in particular a letter from an Egyptian lawyer, Mr Didih, which confirmed a court judgment against the appellant and a sentence of 3 years imprisonment after checking court records, a further declaration from Mr Didih and a statement from a friend of the appellant, Mr Emish, who stated that he had been asked about the appellant's whereabouts by the authorities in Egypt. There is a reference to Mr Didih's evidence in paragraph 50 of the decision but only in the context of whether the respondent should have sought to verify it. There was no substantive assessment of this evidence and therefore no analysis of whether it was capable of distinguishing the findings of Judge Clapham.
7. As above, Mr Mullen accepted for the respondent that these matters amounted to an error on a point of law. He conceded that the error was such that where credibility had to be assessed holistically, the adverse findings on other parts of the evidence were also undermined and would have to be set aside to be re-made. We were in agreement with Mr Mullen's concession.
8. The parties were also in agreement that the decision should be set aside to be re-made afresh in the First-tier Tribunal. Where primary findings of fact on credibility and risk on return had to be re-made it was also our view that the remaking of the appeal should take place in the First-tier Tribunal;

Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC)
considered.

Notice of Decision

9. The decision of the First-tier Tribunal discloses an error on a point of law and is set aside to be remade afresh in the First-tier Tribunal.

Signed: S Pitt
Upper Tribunal Judge Pitt

Date: 13 March 2024