



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004939

First-tier Tribunal No: PA/53557/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 24th of May 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE LEWIS

Between

M. A.
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person.

For the Respondent: Mr M Parvar, Senior Home Office Presenting Officer

Heard at Field House on 4 April 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction & Background; Development of Article 8 case; Documentary evidence

1. This appeal comes before me for the decision in the appeal to be remade following an 'error of law' decision by Deputy Upper Tribunal Judge B Keith issued on 9 February 2024.
2. The parameters for the 'remaking' exercise are delineated in the 'error of law' decision: the decision of the First-tier Tribunal was only set aside in so far as it related to Article 8; the dismissals in respect of asylum and humanitarian protection still stand.
3. The Appellant is a citizen of Egypt born on 26 August 1991. He appeals against a decision dated 19 August 2022 to refuse leave to remain.
4. The Appellant left Egypt on 10 June 2018, travelling to Germany, where he stayed for 10 months. He claimed asylum in Germany, which was seemingly refused – although I note that in his substantive asylum interview the Appellant said that he did not know the outcome.
5. The Appellant claims to have been ill-treated by gangsters whilst in a camp in Germany. He has said that these people were also with him on his journey to the UK (via Holland, Belgium, France, and Ireland). This aspect of his narrative – which is unrelated to his reasons for leaving Egypt and is not part of his substantive asylum claim – was referred to the National Referral Mechanism (see further below).
6. He arrived in the UK on 7 April 2019, whereupon he managed to evade the gangsters. He claimed asylum on 8 April 2019.
7. The protection claim was based on circumstances surrounding a claimed relationship with a Muslim girlfriend. The Appellant is Christian; he claimed he was forced to convert to Islam. He claimed there were continuing threats from his girlfriend's family to his family.
8. The protection claim was described by the First-tier Tribunal Judge as "*fabricated... in its entirety*" (paragraph 40). That finding stands.
9. By the date of the Respondent's decision the Appellant had been in the UK for 3 years and 4 months. No mention of any partner or dependants present in the UK was made in the course of the protection claim. The Respondent concluded that there were no obstacles to return because the protection claim had been rejected.
10. In this context and generally it is convenient to note at this juncture the following:
 - (i) In his screening interview (8 April 2019) the Appellant stated that he had a B.Sc. degree in engineering, and gave his occupation in Egypt as 'Mechanic -

Engineer'. In the substantive asylum interview (22 March 2022) he stated that he had now undertaken a course in the UK to make his qualifications 'equivalent'.

(ii) The Appellant has an older sister living in Nottingham (substantive interview q.19), whom he had visited twice (q.20).

(iii) The Appellant was in daily contact with his parents in Egypt (qs.21-22).

11. By the date of the appeal before the First-tier Tribunal, 30 August 2023, the Appellant's circumstances had changed. I note in particular the following features from the evidence filed before the First-tier Tribunal:

(i) The Appellant was working as an engineer. He produced a contract of employment dated 1st August 2022 with Greencore. (A previous contract of employment with Stonegate dated 8th June 2021 was included in the Respondent's bundle.)

(ii) The Appellant was engaged to marry a British citizen 'M.E.'. (Evidence of ME's employment as a pharmacist with Boots Pharmacy in Queensway, London was provided.)

(iii) The Appellant was undergoing private counselling; see psychological progress reports from Delta Counselling and Psychotherapy dated 7 January 2022, 2 November 2022, and 20 January 2023. (He also placed reliance on a psychological report of Diana Pereira da Silva dated 18 February 2022 - Respondent's bundle page 66.) (See further below.)

(iv) Testimony in respect of involvement with the Coptic Orthodox Church.

12. The Appellant has filed yet further evidence in the context of the remaking hearing to update his circumstances. Amongst other things the evidence shows that the Appellant married ME in the Coptic Orthodox Church on 20 January 2024, and their marriage had been civilly registered. They had commenced cohabiting on marriage and provided evidence of their current address. The Appellant had started a new job on 12 September 2023.

Hearing

13. Although the Appellant has been previously represented, he attended the remaking hearing without representation. He participated with the assistance of an interpreter: I ensured mutual understanding at the outset and no language difficulties became apparent during the course of the hearing.

14. Further to the documents that have been filed in the appeal, all of which are a matter of record, the Appellant gave evidence-in-chief prompted by my question. Mr Parvar did not object to ME being present during the Appellant's evidence; she was invited to provide oral evidence as relevant and incidental to the Appellant's evidence. There

was a short passage of cross-examination. I then invited submissions from the parties. The oral evidence and submissions are a matter of record; I have had regard to everything that was said at the hearing in making my decision.

15. I have also had regard to all of the documentary evidence. In circumstances where the Appellant was no longer represented I have had particular regard to the written submissions previously prepared by way of Skeleton Argument before the First-tier Tribunal – bearing in mind, of course, the passage of time since and the changes of circumstances.

Consideration of Article 8

16. The Appellant's family life. I accept that the Appellant currently enjoys family life with his wife, ME, in the UK. The relationship began in August 2022; the Chronology filed by the Appellant before the First-tier Tribunal shows the relationship starting between the Respondent's decision and the lodging of the appeal. The couple were engaged in November 2022. They did not cohabit prior to marriage because of their religious beliefs, but have lived together in Uxbridge since their marriage on 20 January 2024.
17. The Appellant spoke about feeling more secure in consequence of his marriage. I understand this observation to be made in the context of his mental health problems (explored below). I accept his evidence as to his subjective feelings. He also spoke plausibly of his sense of responsibility to create and support his partner. In this context it seems to me that he likely included in this responsibility a wish not to be responsible for removing his wife from geographical proximity with her family. He related that in changing his employment he had sought a pattern of hours better suited to marital life, and also the importance of having employment close to home – which in turn is reasonably conveniently close to his new in-laws.
18. The Appellant described being part of his wife's family's orbit. I accept this to be the case, but consider that this is an aspect of the Appellant's private life rather than family life, there being no interdependence beyond the sort of ties that might be expected with in-laws.
19. The Appellant has a sister living in Nottingham. He had previously indicated that he saw her occasionally: he confirmed as much to me. He had seen his sister over Easter shortly before the hearing; prior to this he had last seen her at his wedding. The evidence does not suggest bonds beyond the ordinary ties that might be expected between adult siblings, and as such I find that this is an aspect of private life rather than family life; moreover the frequency of contact is such that it is not a very significant aspect of the Appellant's day-to-day private life.
20. The Appellant's private life. Beyond the relationships with his sister and his in-laws discussed above, and personal friendships developed (see testimonials in the Appellant's First-tier bundle), there are in substance two further aspects to the Appellant's private life – his employment and his mental health.

21. The Appellant is employed as an engineer and has been for some time. He obtained qualifications in Egypt and has undertaken a process of equivalence in the UK (NARIC documents are on file). A letter from an employment mentor with Refugee Action Kingston (Appellant's First-tier Bundle, page 198) refers to the Appellant having been a senior engineer in Egypt leading a team and attending international conferences, but having been prepared to start with "very junior" roles considerably beneath his competencies - "He was not scared to start at an entry-level, he was ready to work hard". Since the hearing before the First-tier Tribunal he has commenced a new job as a production engineer with Nature Delivered Limited (trading as 'Graze') on a basic salary of £47,000.
22. The Appellant undertakes regular counselling. Supporting evidence is included in the First-tier bundles. Mr Parvar emphasised that there had been no up-dating material or reports in respect of the Appellant's health. Nonetheless the Appellant confirmed to me - and I accept - that he still attends fortnightly for a 45 minute session. This is paid on his behalf by a charity called Hestia. He does not take any medication for his mental health - evidence refers to him having been prescribed medication but stopping taking it after one month. The Appellant does not access any other form of treatment either for his mental health or otherwise. The counselling sessions are not on a fixed course: there is no defined date of completion; the Appellant told me that he expected that when his counsellor thought it appropriate she would change the nature of his therapy.
23. The psychological progress reports from Delta Counselling and Psychotherapy dated 7 January 2022, 2 November 2022, and 20 January 2023 refer.
24. Further to this, the Appellant provided before the First-tier Tribunal a psychological report prepared by Diana Pereira da Silva dated 18 February 2022 based on an 80 minute assessment interview conducted through an interpreter on 7 February 2022. The report diagnoses PTSD and a comorbid major depressive disorder (characterised as 'single episode' and 'severe'). The report recommended treatment: "In my professional opinion, [the Appellant] requires an urgent and ongoing course of highly specialist treatment... ideally highly specialist ("High Intensity") Cognitive Behavioural Therapy... and Longer-term psychotherapeutic supportive therapy"; reference was also made to EMDR (Eye Movement Desensitisation and Reprocessing). Ms da Silva referred to the Appellant being on Sertraline and Zopiclone, for depression and sleep, but did not otherwise seemingly have sight of GP records. (It is also to be noted that the Appellant only remained on his medications for one month: see Decision of First-tier Tribunal at paragraph 28.)
25. I have noted and taken into account the written submissions in the Appellant's First-tier Tribunal Skeleton Argument in respect of the relevance of his mental health issues to Article 8 - in particular:
 - (i) "The psychological report of Diana Pereira da Silva dated 18 th February 2022 (page 66 of the respondent bundle) confirm that the appellant suffers from Major Depression, PTSD and that he experienced suicidal ideation due to what happened to him in Egypt

and Germany. He continues to require CBT and long term psychotherapy (page 14 and 15 of Ms Pereira da Silva's report). The updated progress reports dated 2022 and 2023 confirm that the appellant continues to undergo therapy."

(ii) In the context of paragraph 276ADE(1)(vi) of the Immigration Rules: *"The appellant's poor mental health, evidenced by his ongoing need for therapy is a further reason to find that the appellant will have very significant difficulty integrating in Egypt. The Home Office guidance titled CPIN Egypt Version 2.0 June 2022 at section 6.2 confirms the limited treatment and care for those suffering poor mental health:"*

26. Mr Parvar invited my consideration to the fact that the psychological report and the letters in respect of the Appellant's counselling had in their premises an acceptance of the Appellant's account of events in Egypt – which had been rejected by the First-tier Tribunal. He submitted that the reports should be seen through such a prism accordingly. This prompted a discussion of the events that were said to have befallen the Appellant during his journey to the UK, and that had informed a referral to the NRM. (See further below.)
27. ME's family / private life beyond her relationship with the Appellant. ME was born in Egypt on 2 April 1992. She is a naturalised British citizen having relocated here with her family in 2005 (i.e. when she was about 13). She has retained her Egyptian nationality - she is a dual national; as such there is no legal bar to her relocating to the country of her first (and continuing) nationality.
28. ME has qualified as a pharmacist in the UK. She is employed full-time as a pharmacist with Boots: wage slips previously provided indicate her earnings to have been £3500 monthly (i.e. c.£42,000 annually). She has had a small pay rise more recently.
29. ME spoke previously about her closeness to her family. Indeed in her witness statement dated 23 January 2023 she states: *"... I cannot relocate and go and live in another country. I live with my family who are very close to me and I depend on my parents for love and support and vice versa. My family are a significant source of support to me and it is important for me to be here with them. Without them I will be lost. I cannot enjoy family life with my own family from outside the UK"* (paragraph 12). Necessarily this passage has now to be considered in the light of the change of circumstance of ME having married and moved from her family home to live with the Appellant. Nonetheless it is said – and I accept - that she still remains very close to her family. The home in which her parents reside is jointly owned by the Appellant and her sister. I was told that her sister is her twin and they have the very special bond that some twins enjoy. ME's father is a pastor and she is significantly involved with the church in consequence - in particular she takes a Sunday school for children. ME also plausibly refers to *"a strong social life [with] a valued support network of close friends"*.
30. ME acknowledged that she has relatives in Egypt whom she would visit every year or two for a week – albeit she had never visited on her own. (Of course there is no

suggestion that she should now relocate to Egypt on her own; it would be with her husband.)

31. It was said that ME could not read Arabic. Mr Parvar raised paragraph 26 of the Decision of the First-tier Tribunal in which the Appellant was noted to have said that ME "*can write Arabic and speak broken Arabic*". The response was that ME could only read basic Arabic. She expressed particular concern about the difficulty in finding a job as a pharmacist in circumstances where she has no direct experience of the country and her language skills are limited. I acknowledge that the precision required from a pharmacist would mean that a lack of fluency in reading and writing would be a potential obstacle to such employment.
32. NRM. I have noted above that the Appellant claims to have been ill-treated by gangsters during his journey to the UK. These matters are referenced briefly at question 41 of the substantive asylum interview: whilst in a migrant camp in Germany the Appellant was sexually abused by others in the camp who then blackmailed him and/or forced into working for them. When a referral to the NRM was suggested, the Appellant's legal representative indicated that there had already been a referral (q.42). The RFRL at paragraph 6 states "*On 2 December 2019 referral was made on your behalf to the National Referral Mechanism in order for the Single Competent Authority (SCA) to make a decision as to whether you are a victim of modern slavery. Your status as a victim of modern slavery is assessed in a separate decision-making process by the SCA...*". The First-tier Tribunal Judge noted this circumstance, adding "*... it was indicated to me at the date of hearing that application remained outstanding with no decision having been made same*" (paragraph 4); the relevant claimed events during the journey to the UK were not the subject of any further consideration or any express findings by the First-tier Tribunal.
33. The Appellant told me that he was still awaiting a decision from the NRM. Mr Parvar confirmed that there was nothing on the Respondent's records to indicate that a decision had yet been made.
34. For the avoidance of any doubt, I have noted the contents of the letter dated 31 March 2022 from Migrant Help in respect of support being provided to the Appellant pending a Conclusive Grounds decision under the NRM (Appellant's First-tier bundle, page 48). This letter refers to a positive Reasonable Grounds decision having been made on 5 December 2019. I am hesitant to place any great weight on this letter as determinative of whether or not a positive Reasonable Grounds decision has been made given that it erroneously refers to the Appellant as a woman, the purported positive Grounds decision come so very quickly after the date of referral, and there being no other evidence of a positive Reasonable Grounds decision.
35. Be that as it may the reality is that any decision of the NRM – whether at the 'reasonable grounds' stage or the 'conclusive grounds' stage – is not binding on the Tribunal in any way. Moreover, and more particularly on the facts of this particular case, it is difficult to see how even a positive Conclusive Grounds decision would avail the Appellant in immigration terms – whether by reference to protection

grounds or human rights grounds. Events relevant to the NRM assessment do not relate to any risk in the Appellant's country of nationality: the events did not take place in Egypt and there is no suggestion that those who it is claimed ill-treated the Appellant were Egyptian. A positive Conclusive Grounds decision does not in itself give rise to any entitlement to remain under the Immigration Rules whether by reference to Article 8 or otherwise. There is no obvious remedy provided to the claimed travails of the Appellant by the grant of leave to remain in the UK. It seems that at best a positive finding would do no more than lend weight to the diagnoses in respect of the Appellant's mental health – but I am able to take into account such diagnoses irrespective of any Conclusive Grounds decision.

36. As such it seems to me that in this particular case the matter becomes one of principle: specifically, whether or not, and if so to what extent, the circumstance of having a NRM decision pending impacts on the Article 8 proportionality balance.
37. In the circumstances I invited Mr Parvar's submissions on whether or not it would be reasonable to expect the Appellant to quit the UK in order to pursue an application for entry clearance from abroad in circumstances where he was still awaiting a NRM decision. Because this matter had not been specifically addressed by the parties hitherto, and because the Appellant as a litigant in person could not reasonably be expected to have the necessary competence to refer me to any relevant instruments or case law, I permitted Mr Parvar a limited period of time post-hearing to provide me with any relevant evidence. In the event in an email response dated 9 April 2024 he wrote:

"I have searched through our published policies on NRM referrals, but I have not found anything that might be of assistance for the appellant in this case.

I would in these circumstances have to maintain the observations which were made at the hearing last week. While it is right that this appellant may not be removed until the conclusive grounds decision is made, there were no public law arguments put forward by his former representatives as to any delay/potential breach of the ECAT, but even then it is difficult to see how an outstanding referral is of any significant relevance to the appellant's Article 8 case and the various matters which tie into his family/private life."

38. Public interest considerations. I have had regard to the public interest considerations under section VA of the Nationality, Immigration and Asylum Act 2002.
39. The maintenance of effective immigration control is in public interest (s.117B(1)). Maintenance of effective immigration control is ordinarily effected by the consistent application of the published Immigration Rules. The Appellant does not satisfy any of the relevant Immigration Rules. Moreover, as emphasised by Mr Parvar, the Appellant was found to have fabricated the entirety of his protection claim. It follows that he never had any good reason for entering and seeking refuge in the UK. I accord this aspect of the public interest considerations very significant weight.

40. Although the Appellant gave evidence through an interpreter I note that he has undergone education in the UK to an extent to 'convert' his engineering degree, and has been in steady and consistent employment in a relatively responsible role – which suggests adequate competence in English such that there would be no bar to integration. Indeed, the fact of his employment suggests that he has already achieved a significant degree of integration. Accordingly no negative weight is to be given to section 117B(2).
41. Similarly no negative weight is to be given pursuant to section 117B(3): the Appellant is on a good salary (as is his wife), such that he is financially independent.
42. The Appellant has never had status in the UK: he entered unlawfully, and – as identified above – did so with the intention of pursuing a fabricated asylum claim. Section 117B(4) applies. In this context it is to be noted in particular that the Appellant's relationship with ME began only after he had been refused asylum, and his marriage took place after his appeal had been dismissed by the First-tier Tribunal. This is not to deny the genuineness of his marital relationship, but underscores the fact that neither he nor his wife could have any reasonable expectation that the relationship would avail the Appellant in immigration terms. Section 117B(4) requires that "little weight" to be given to the Appellant's private life and his relationship with ME: I acknowledge that this is not the same as 'no weight'.

Distillation & Conclusions

43. I find that neither paragraph 276ADE(1)(vi) of the Immigration Rules, or Section R-LTRP of Appendix FM (with particular reference to paragraph EX.1), avail the Appellant. However, I am just persuaded that there are "exceptional circumstances which could render refusal of ... leave to remain a breach of Article 8 of the European Convention on Human Rights, because such refusal could result in unjustifiably harsh consequences" for the Appellant and/or ME, within the contemplation of paragraph GEN3.2 of Appendix FM.
44. In terms of the Appellant's private life, I find that it has not been demonstrated on a balance of probabilities that as an individual he would face very significant obstacles to integration in Egypt. His asylum claim has been rejected as fabricated; as such there is no evidence of any risk to him in his home country. Notwithstanding mental health difficulties he has been able to hold down a succession of full-time engineering jobs in the UK. He previously had senior roles in engineering in Egypt. With the support of family members still present in Egypt, I can see no reason why he would not be able to find reasonably high-level employment again. I am not persuaded that the now out-of-date medical evidence provides adequate reason to conclude that the Appellant would face significant deterioration in his mental health were he to return to Egypt to an extent that he could not both work and otherwise participate in life there – in a milieu which he has still only relatively recently left. Even allowing for the case that he continues to require, and continues to benefit from, counselling I find that it is not been established that he would not be able to access such support in Egypt. Whilst the evidence suggests that the availability of

such treatment is more limited in Egypt than it is in the UK, it is to be recalled that the Appellant is likely to be amongst the higher earners in Egypt: I am not persuaded that he would not be able to find some form of help for his mental health problems. Even if he could not find such help in Egypt, whilst acknowledging that it would probably be a second-best option, there is nothing to suggest that he could not continue with his counsellors in the UK by way of remote connection such as Zoom or Facetime.

45. Much the same considerations apply in the context of relocation with his wife. The Appellant's circumstances are such that I am not persuaded that there would be insurmountable obstacles to family life continuing outside the UK with ME. The Appellant would be able to work and finance a home for the couple. Pending establishing themselves, emotional and practical support would be available from both the Appellant's family and relatives of ME.
46. ME is not a stranger to Egypt. It is her country of birth and country of her first nationality; she retained citizenship. She is a regular visitor. She has some competency in the language and it may be anticipated that this would improve upon living there. As it may be that she could not immediately find employment as a pharmacist there is no reason to think that in relatively short order she could achieve adequate language skills and either convert her current qualification or obtain a further qualification recognised in Egypt; in any event there is no evidence that other employment activities would be closed to her.
47. I acknowledge that for ME the biggest disruption would be leaving her parents and twin sister. I also do not underestimate the element of giving up a life, a job, and friendships established over time in the UK. However, I do not consider that it has been shown that any of these matters either individually or collectively amount to insurmountable obstacles to leading a fulfilling family life with the Appellant in Egypt. It is not unusual for there to be significant change in an individual's life on marriage – including relocation whether within a country or across borders.
48. Notwithstanding the foregoing, in any event it seems to me that the reality of the situation is that neither the Appellant nor ME anticipate relocating to Egypt in the event the Appellant is required to leave the UK. The reality is that ME will support the Appellant in an application for entry clearance as a spouse. The evidence indicates that the Immigration Rules are likely to be satisfied: the genuineness of the marital relationship is not disputed, ME's earnings are more than sufficient to meet the financial requirements, and the Appellant is likely to be able to demonstrate competency in English.
49. It is to be acknowledged that the process of making an application for entry clearance from abroad will involve delay for an uncertain period, and also subjective concern about the outcome of any such application. I find that this will likely have an adverse impact on the Appellant's mental health in particular – and to this extent note that Mr Parvar suggested that his mental health symptoms were likely largely

‘situational’; awaiting the uncertain outcome over an uncertain period is situationally problematic. Nonetheless I acknowledge that such concerns may be alleviated to some extent by there being good reason for optimism in the outcome; further the Appellant will have the benefit of the support of his parents in Egypt in the interim; yet further it is possible for ME to be with the Appellant in Egypt for at least some of the time subject to her employment commitments; and, as discussed above, the Appellant will still likely be able to access counselling support whether based in Egypt or remotely with the UK.

50. Notwithstanding the possibility of taking steps to alleviate matters, I find that the process of seeking entry clearance from abroad will carry with it a significant degree of disruption, stress, and anxiety for both the Appellant and ME.
51. I also acknowledge that the Appellant’s employment may be at risk given that he would need to seek a period of leave for an uncertain period. It seems to me that there is a very real risk that he would lose his job. Although it is more likely than not that he would be able to find another job if granted entry clearance to return to the UK, I note his evidence in respect of having taken the current job because of a combination of the working hours and proximity to his marital home. On balance I find there is likely to be disruption to the Appellant’s employment, and that this will be an additional source of stress and anxiety.
52. I have noted above that there are aspects of the public interest considerations that weigh heavily against the Appellant. Nonetheless, and having had full regard to the guidance in **Alam [2023] EWCA Civ 30**, on the very particular facts I have concluded – albeit by the finest of margins – that there is no sensible, or proportionate, reason for the Appellant to be expected to go through the process of applying for entry clearance rather than being allowed to remain in the UK. In my judgement the consequences in terms of stress and anxiety to the Appellant and ME, and the probable disruption to the Appellant’s employment, are not justifiable consequences by reference to the public interest considerations. In circumstances where the Appellant and ME are likely to end up living lawfully together in the United Kingdom, I do not find that the imperative of maintaining effective immigration control requires the route to such a result to involve the Appellant quitting the UK rather than being allowed to remain now.
53. In reaching this conclusion I have factored in the circumstance that the outstanding NRM consideration is such that the Appellant cannot be required to leave the UK presently. Whilst this does not prevent a voluntary departure, the fact that there is in substance a prohibition on forced removal suggests that the public interest does not presently require the Appellant to quit the UK. This lends weight to his Article 8 proportionality argument. However, for the avoidance of any doubt, I would have reached the same conclusion irrespective of this factor.
54. For the reasons given the Appellant’s appeal succeeds on human rights grounds.

Notice of Decision

55. The appeal is allowed.

I. Lewis

Deputy Judge of the Upper Tribunal
(Immigration and Asylum Chamber)

14 May 2024

To the Respondent

Fee Award (*This is not part of the determination*)

Although the appeal has been allowed this is in large part on facts that post-date the Respondent's decision. In the circumstances I make no fee award.

I. Lewis

qua Judge of the First-tier Tribunal
Immigration and Asylum Chamber

14 May 2024