



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

Appeal Number: PA/03738/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 5 December 2019**

**Decision & Reasons Promulgated
On 24 December 2019**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

**M D
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Janjua, Counsel

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Egypt born in 1997. He arrived in the UK on 12 March 2017 and claimed asylum on the same day. His claim was rejected in a decision dated 3 April 2019.
2. The appellant appealed against that decision and his appeal came before First-tier Tribunal Judge Row ("the FtJ") at a hearing on 20 June 2019 which resulted in his appeal on asylum and human rights grounds being dismissed.

3. The basis of the appellant's claim is that he has been a supporter, but not a member, of the Muslim Brotherhood since about 2013. He attended demonstrations and distributed leaflets. During a demonstration he was hit on the head by the police and needed hospital treatment. In his asylum interview he said he became known to the police because he attended many demonstrations. However, he was never arrested by the police.
4. Nevertheless, a warrant was issued for his arrest in June 2015 in relation to a false accusation of damaging government property. The police came looking for him but he was not at home. There was a court case involving him and six other people although the appellant and one other had already escaped by then. He was sentenced to five years' imprisonment in his absence.
5. After leaving Egypt he went to Italy where he made an unsuccessful claim for asylum. He then went to Switzerland where he also claimed asylum but again that claim was refused. He then returned to Italy before going to France where he stayed for two months, and then Belgium where he stayed for five months. He came from Belgium to the United Kingdom and claimed asylum.
6. Whilst in Italy he was informed by his family of the sentence of five years' imprisonment in his absence.

The Ftj's decision

7. In his findings the Ftj resolved in favour of the appellant a number of adverse credibility issues relied on by the respondent in the decision letter.
8. At [13] the Ftj directed himself that the appellant was under no obligation to corroborate any part of his account. Nevertheless, he noted that the main part of his account, of being sought by the Egyptian authorities and sentenced to five years' imprisonment in his absence, was not supported by documentary or other evidence. Thus, the Ftj said that he would consider that matter in accordance with paragraph 339L of the Immigration Rules. In the next paragraph the Ftj said this:

"I am satisfied that the appellant has made a genuine effort to substantiate his asylum claim. He claimed asylum. He attended for interview. He has cooperated in the appeal process."
9. There were three matters which the Ftj identified as being adverse to the appellant's credibility. First, at [21] there was inconsistency between the appellant's account of being subject to an arrest warrant and sentenced to imprisonment, and what he said in his screening interview. In the screening interview which took place on 13 March 2017 the appellant answered in the negative to the question of whether he had ever been accused of any offence or been involved in any political organisation. As to his reasons given in the screening interview for claiming asylum, he

said that there was no peace in the country and sometimes the government arrested people. The Ftj accepted that the screening interview was not meant to be a detailed account of the appellant's claim but concluded that it would be expected that such important matters (as the basis of his claim) would have been mentioned at that time.

10. Next, the Ftj referred to the appellant having claimed asylum in Italy and Switzerland. However, he concluded that section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 ("the 2004 Act") applied, in that the appellant was in France and Belgium for a total of seven months but did not claim asylum despite having the opportunity to do so. He thus found that his failure to make a claim whilst in France and Belgium damaged his credibility under s.8(4) of the 2004 Act.
11. Third, in relation to the arrest warrant, he said at [24] that he was not satisfied that the appellant had "produced all material factors" at his disposal or given a satisfactory explanation as to why not. He found that although the appellant could not have been expected to produce the arrest warrants, and it would not be expected that they would have been left with his family by the police, there would be records of such a judicial sentence which "would presumably be obtainable". He found that the records would prove one way or the other whether or not the appellant had been sentenced to imprisonment in his absence.
12. He went on to find at [25] that although the appellant could not himself have been expected to approach the Egyptian authorities to obtain the information, he was represented by solicitors and it would have been possible either for those solicitors to approach the Egyptian courts to obtain a copy of a memorandum of conviction and sentence or, alternatively, to instruct a lawyer in Egypt to do this on his behalf. He found that none of that would compromise the appellant and the court would "presumably" either confirm the appellant's version or say that there were no records of any such sentence. He reasoned that either way, it would have clarified the issue. He went on to state that it might not have been possible to obtain this information but it would be reasonable to have attempted to do so and that had not been done.
13. The Ftj then referred to background evidence in the form of the Home Office country information report dated July 2017 and other reports from Human Rights Watch and Amnesty International in terms of those who were likely to be at risk on return.
14. Then, at [29], the Ftj concluded that the inconsistencies in the appellant's account, his failure to obtain evidence which might have been readily obtained and his failure to claim asylum in safe countries, all damaged his credibility.
15. Whilst he concluded that the appellant was a supporter of the Muslim Brotherhood, that was at a low level and he was never a member of the organisation. He found that the appellant had not established that a

warrant was issued for his arrest or that he was prosecuted in his absence for unspecified offences or sentenced to five years' imprisonment. He concluded that all that was fabrication and that the appellant had never come to the adverse attention of the Egyptian authorities because of his political views. He found that as a low-level supporter of the aims of the Muslim Brotherhood, he would not be at risk on return.

The grounds and submissions

16. The grounds contend that the FtJ did not consider the evidence in the round and placed "undue weight" on the fact that the appellant did not claim asylum at the earliest opportunity. He had, however, claimed asylum both in Italy and Switzerland, as well as on entering the UK. It is asserted in the grounds that the appellant's account was broadly consistent with the background evidence.
17. The grounds continue in asserting that the FtJ failed to conclude that all the relevant elements at the appellant's disposal had been submitted, and otherwise make general submissions about credibility and the need for anxious scrutiny.
18. In his submissions, Mr Janjua contended that the FtJ's conclusion that the appellant could enlist the help of his solicitors to obtain documents from Egypt (the arrest warrant or other documents), or through lawyers, was speculative. In addition, the inconsistency identified by the FtJ in the screening interview was not put to the appellant, nor was the suggestion that he could in some way obtain confirmation of the arrest warrant or sentence of imprisonment.
19. Ms Isherwood argued that the appellant's witness statement in fact deals with the issues of the arrest warrant and screening interview, the appellant having said at [13] of his witness statement that he could not get his hands on the arrest warrant as it was not given to his family. At [6] of his witness statement the appellant responded to [32] of the decision letter which mentioned what he had said in his screening interview to the effect that if he returned to Egypt he would be arrested and no one would know about him. It was submitted, therefore, that in the circumstances the FtJ was entitled to conclude as he did at [21] of his decision.
20. It was further submitted that given that the appellant's own case at its highest was that he was a low-level supporter, that profile would not put him at risk, as the FtJ found at [30].
21. In relation to the s.8 point, although he had claimed asylum in Italy and Switzerland and been refused, he did not claim asylum in France and Belgium. Thus, the FtJ was entitled to conclude that that damaged his credibility.

Assessment

22. The argument advanced before me in terms of issues not having been put to the appellant are not specifically raised in the grounds of appeal which, it must be said, leave something to be desired in the drafting. For example, on page 2 of the grounds it refers to the Ftj failing to apply the benefit of the doubt “to the Appellant’s claim of being in relationship outside marriage”. That was never part of the appellant’s claim and it seems obvious that whoever drafted the grounds did not check them before they were lodged.
23. Nevertheless, in general terms the Ftj’s assessment of the appellant’s credibility is raised and in those circumstances I consider that the argument about matters not having been put to the appellant is legitimately before me.
24. In relation to the screening interview, the appellant was asked at question 4.1 to explain briefly all the reasons why he could not return to his home country. The appellant said this:

“There is no peace in my country. Sometimes the government arrest you and put you in prison. There is no peace.

If I return back the government will arrest me and no one know about me.”
25. The point that the Ftj made in this respect was, on the face of it, a valid one. However, there is nothing to indicate that the appellant was asked to comment on that apparent inconsistency between his account and what he said in the screening interview. The Ftj very properly referred to the fact that the screening interview is not meant to be a detailed account of an appellant’s claim. I do consider, however, that if that was a matter that was to feature in the Ftj’s adverse credibility assessment, the appellant ought to have been asked for his explanation of it. Although the screening interview is referred to in the respondent’s decision letter, it is not referred to in terms of inconsistency, such that the appellant could have been expected to have dealt with it in his comments on the refusal letter. I do not accept the submission made on behalf of the respondent to the effect that the appellant dealt with the matter in his witness statement.
26. Of greater significance, it seems to me, is the Ftj’s conclusion at [25] to the effect that the appellant could have been expected, through his solicitors, or through a lawyer instructed in Egypt, to approach the Egyptian courts to obtain a copy of a memorandum of conviction and sentence. The Ftj stated that the court would “presumably” either confirm the appellant’s version or say that there were no records of any sentence of imprisonment. Although the Ftj said that it might not have been possible to obtain this information, he found that it would be reasonable to have attempted to do so and that had not been done. However, again, this is not a matter that was put to the appellant. Whilst I accept that a judge is entitled to make an adverse credibility finding against an appellant in circumstances where evidence of a fact could reasonably have been expected to have been provided, there was no evidence before

the Ftj as to the extent to which it would have been possible to obtain those documents or why the appellant did not do so.

27. As regards the Ftj's conclusion that the appellant's failure to make a claim for asylum whilst in France and Belgium damaged his credibility, the Ftj was applying s.8(4) of the 2004 Act. It was not argued before me that, in fact, the Ftj had gone too far in concluding that the failure to claim asylum in France and Belgium actually damaged his credibility, rather than potentially doing so, as explained in *JT (Cameroon) v Secretary of State for the Home Department* [2008] EWCA Civ 878. But, putting that aside, the s.8 point could not, on the facts of this case, on its own, found a sufficient basis from which to conclude that the appellant's claim was not credible.
28. I am satisfied that the two matters to which I have referred which were not put to the appellant for his explanation or comment, namely the inconsistency in the screening interview and the lack of attempts to obtain, or failure to obtain, documents about the case against him, are such as to found an error of law in the Ftj's decision. The contention on behalf of the respondent to the effect that the appellant was in any event only a low-profile supporter of the Muslim Brotherhood and thus would not be at risk, is an unsustainable argument in circumstances where there has been a flawed assessment of the claim that a warrant has been issued for his arrest and that he has been sentenced to five years' imprisonment.
29. The error of law is such as to require the Ftj's decision to be set aside because it is fundamental to the appellant's credibility.
30. Further, given that there needs to be a fresh assessment of the appellant's credibility, and taking into account paragraph 7.2 of the Senior President's practice statement, the appropriate course is for the appeal to be remitted to the First-tier Tribunal for a hearing *de novo* before a judge other than First-tier Tribunal Judge Row, with no findings of fact preserved.

Decision

31. The decision of the First-tier Tribunal involved the making of an error on a point of law. Its decision is set aside and the appeal is remitted to the First-tier Tribunal for a hearing *de novo* before a judge other than First-tier Tribunal Judge Row, with no findings of fact preserved.

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 his 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.

Upper Tribunal Judge Kopieczek
20/12/19