



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

Appeal Number: PA/02012/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 19 December 2019**

**Decision & Reasons Promulgated
On 9 January 2020**

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

**KD
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Philps, Counsel instructed by Duncan Lewis & Co Solicitors

For the Respondent: Ms R Bassi, Home Office Presenting Officer

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 appellant and other parties to these proceedings. Any breach may lead to contempt proceedings.

1. The appellant, who is a citizen of Egypt born in 2001, appeals with permission the decision of First-tier Tribunal Judge Khan, who for reasons given in his decision which was promulgated on 20 September 2019, dismissed the appellant's appeal on all grounds against the Secretary of

State's decision refusing the appellant's protection claim, which was based on a dispute with neighbours that had led to his flight to the United Kingdom, where he arrived on 29 July 2017 and claimed asylum some three weeks later, having travelled through Italy, France, Germany and Belgium. The Secretary of State rejected the claim as not credible.

2. In summary, the appellant's account was based on an altercation with a person called Hassan (and his family) following a dispute arising out of a complaint that the appellant had flooded the family land. This resulted in violence between the appellant and Hassan, and subsequent firing of guns by others at the appellant's house. Inconsistencies in the account led the Secretary of State not to accept it is credible, alleging also that the appellant's father had been contacted by the Family Tracing Team and had agreed to meet the appellant at the airport on return. A further limb to the claim relates to Hassan's family's association with the Muslim Brotherhood and their connections with the police. Essentially, the Secretary of State did not accept that this claim was consistent with the country information.
3. After a survey of the relevant provisions of the Immigration Rules in relation to Article 8 as to the appellant's private life and exceptional circumstances, it was considered by the Secretary of State that the appellant's return would not be in breach of that provision.
4. Judge Khan refused to adjourn the hearing on application by the appellant's counsel to obtain a medical report on the appellant's psychological condition on the basis that the case had been adjourned on a number of occasions previously and that it was in the interests of justice and fairness for the case to proceed. It was requested that the appellant be considered as a vulnerable witness, to which there was no objection, and the judge then heard evidence from the appellant, his support worker, Mr Lewis, and submissions from the parties.
5. The judge gave reasons for not accepting the credibility of the appellant's account and on this basis dismissed the appeal on protection grounds. In respect of Article 8, the judge reviewed the relevant legislation and the authority in *AM (Section 117B) Malawi* [2015] UKUT 0260 (IAC) and concluded the appellant did not meet the requirements of the Immigration Rules nor did he qualify under Section 117B of the Nationality, Immigration and Asylum Act 2002.
6. Permission to appeal has been granted on all grounds, comprising seven in total. I invited Ms Philips to make her submissions on what she considered to be the strongest of those grounds, and I am grateful to her for her submissions on grounds 1, 5 and 6. I am also grateful to Ms Bassi for her response.
7. Ground 1 argues that the judge procedurally erred in not allowing an adjournment in order to obtain a medico-legal report. Ground 5 argues that the judge incorrectly summarised the appellant's support worker's

evidence in relation to his mental health and in doing so failed to approach the decision with anxious scrutiny. It is also contended the judge went on to make a finding about the appellant's mental health on return to Egypt, taking into account irrelevant considerations and failing to have regard to the material evidence. Ground 6 argues that the judge failed to make a finding as to whether there was a real risk that the appellant's removal from the United Kingdom would lead to his self-harm in circumstances which engaged the responsibility of UK authorities and amount to a breach of his Article 3 rights.

8. Starting with ground 1, it is not known why the case was first adjourned. It appears that there was a refusal to adjourn the case at a subsequent hearing on 13 August 2019 when Ms Philps represented the appellant. By that stage new representatives had been instructed. That adjournment application had been in order to obtain a medico-legal report, which would take some six months. As it happened the hearing did not go ahead because there was an issue with the availability of an interpreter. When the matter came back before the Tribunal (Judge Khan) on 5 September 2019 the appellant had changed his representatives and furthermore had instructed an expert medical witness, Dr Pitesh Sinha, a GP with experience in scarring as well as mental health. It was submitted on the appellant's behalf that a report would be available within five weeks, or possibly sooner.
9. The judge also had before him a witness statement by Mr Lewis, the appellant's support worker. It is to be remembered that the appellant only turned 18 in January 2019. Mr Lewis's statement explains that he has qualifications in health and social care, a field in which he had worked for six years. He had been assigned to the appellant as his key worker. His statement on which he was cross-examined at the hearing refers to the appellant's mental health difficulties and the steps that Mr Lewis had taken in that regard. He also refers to the appellant having been self-harming and photographs he had been shown of injuries. He expresses a view or opinion in his statement as to the extent and nature of the appellant's difficulties.
10. The judge was aware at the hearing that the appeal had been adjourned previously because of the time it would take for medical evidence to be obtained. That difficulty had been resolved by the time the matter came before Judge Khan in the sense that a report could be obtained much sooner. Furthermore, the judge had been invited to treat the appellant as vulnerable and he had before him evidence of concerns regarding the appellant's mental health. The reasons that he gave for refusing to adjourn the hearing including the observation that it was in the interests of justice and fairness for the case to be heard. The judge did not give any reasons for those observations.
11. Turning to ground 6 which Ms Philps submitted could be taken together with ground 5, the evidence before the judge indicated the possibility of suicide ideation however the judge's decision is silent so far as Article 3 is

concerned on this aspect. There is no reference to the authorities that Ms Philps stated had been put before the judge, specifically *J v SSHD* [2005] EWCA Civ 629 as informed by *Y and Z v SSHD* [2009] EWCA Civ 362.

12. In relation to ground 5 which argues a failure by the judge to correctly record the evidence by the social worker, counsel's note now produced before me does point to this possibility, with particular reference to the judge's observations in paragraph 65 of the decision, which specific to the point is in these terms:

"I find that Article 8 of the ECHR is not engaged in this case. The appellant has some mental issues, which may be as a result of his separation from his family and way of life in Egypt. On his return to Egypt his family would be able to help and assist his [sic] to a cure. The appellant's family and private life can continue in Egypt."

The evidence by the appellant and that of Mr Lewis points to a different factual scenario.

13. Taking these three grounds together, I am satisfied that the judge materially erred in not adjourning the hearing in order for the promised medical report to be obtained and failed to address all the issues before him. The evidence pointed to an appellant with potentially serious mental health difficulties and there was justification for an adjournment in order for this to be properly explored. Even if a refusal to adjourn was justified at the outset of the hearing, I consider it was incumbent upon the judge to re-consider the matter in the light of the invitation for him to treat the appellant as a vulnerable witness and after cross examination of the social worker.
14. Ms Bassi although arguing that the judge had not erred, accepted that in the light of the indication of my decision on these three grounds at the conclusion of submissions, the decision would need to be set aside and the appeal re-heard without the need for submissions on the remaining grounds. I think that is a sensible course. Accordingly, I set aside the decision of the First-tier Tribunal in the light of the above errors.
15. As to its re-making, having regard to the nature of those errors and the substantial fact-finding that would be required, the case is remitted to the First-tier Tribunal for its re-consideration de novo by a differently constituted tribunal.

Signed

Date 23 December 2019

UTJ Dawson

Upper Tribunal Judge Dawson