



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

Appeal Number: PA/00438/2020 (P)

**THE IMMIGRATION ACTS**

**Decided without a hearing**

**Decision & Reasons Promulgated  
On 09 July 2021**

**Before**

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**A F  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**This appeal has been decided without a hearing, pursuant to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

**Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant or members of his family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.**

**DECISION AND REASONS**

## **Introduction**

1. This is an appeal against the decision of First-tier Tribunal Judge J Bartlett (“the judge”), promulgated on 18 November 2020. By that decision, the judge dismissed the appellant’s appeal against the respondent’s decision, dated 17 December 2019, refusing his protection and human rights claims.
2. The appellant is a citizen of Egypt, born in 1965. He arrived in United Kingdom in 2016 and claimed asylum. The claim was based on the assertion that he had been previously been arrested by the Egyptian authorities and remained of adverse interest to them. An initial appeal to the First-tier Tribunal was dismissed in 2017 and this decision was not successfully challenged. Further submissions were subsequently made to the respondent and these were treated as a fresh claim, with an accompanying right of appeal.
3. On appeal before the judge, the appellant relied on his original claim and maintained that he was of adverse interest to the Egyptian authorities. Further evidence, including court documents and the letter from an Egyptian lawyer, were relied on.

## **The decision of the First-tier Tribunal**

4. The judge applied the Devaseelan principles to the case before him, rejected the reliability of the new documentary evidence, and concluded that the appellant had fabricated his claim and was not at risk on return to Egypt.

## **The grounds of appeal and grant of permission**

5. The grounds of appeal asserted that the judge had erred in law by effectively treating the 2017 First-tier Tribunal decision as decisive of the appeal before him, without giving any or any adequate consideration to the new documentary evidence. The grounds argued that the case should ultimately be remitted to the First-tier Tribunal for a *de novo* hearing.
6. In granting permission to appeal, Upper Tribunal Judge Plimmer concluded that it was arguably unfair and/or arguably irrational for the judge to have concluded that because of the 2017 adverse credibility findings, the new evidence also fell to be rejected as incredible.

## **The respondent’s rule 24 response**

7. In a rule 24 response dated 4 February 2021, the respondent confirmed that she was not opposing the appellant’s appeal to the Upper Tribunal. It was accepted that the judge had erred for the reasons set out in the grounds of appeal and alluded to by Judge Plimmer in her grant of permission. The Upper Tribunal was invited to remit the case to the First-tier Tribunal for a *de novo* hearing.

### **Deciding this appeal without a hearing**

- 8.** In the particular circumstances of this case, I have concluded that it is fair and in the interests of justice to decide this appeal without a hearing, pursuant to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008. The appellant has sought remittal on a *de novo* basis and this is the agreed course of action put forward by the respondent as well. There can be no prejudice to either party arising from a decision without a hearing.

### **Conclusions on error of law**

- 9.** In my judgment, the respondent's concession in this appeal is fully justified. I am satisfied that the appellant was not cross-examined on the new documentary evidence at the hearing. That evidence was, on its face, potentially highly significant to his protection claim. Further, reading the judge's decision as a whole, I am satisfied that the 2017 First-tier Tribunal findings were effectively treated as decisive of the assessment of the new documentary evidence. At the very least, inadequate reasons were provided for rejecting all of this evidence.
- 10.** In all the circumstances, I conclude that, for the reasons set out in the grounds of appeal and accepted by the respondent, the judge erred in law. The errors are plainly material and the judge's decision must be set aside.

### **Disposal**

- 11.** The only appropriate course of action is to remit this case to the First-tier Tribunal for a complete re-hearing, with no preserved findings of fact.

### **Anonymity**

- 12.** The First-tier Tribunal made an anonymity direction and it is appropriate to maintain this.

### **Notice of Decision**

- 13.** The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
- 14.** I exercise my discretion under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 and set aside the decision of the First-tier Tribunal.
- 15.** I remit the case to the First-tier Tribunal.

**Directions to the First-tier Tribunal**

1. This appeal is remitted to the First-tier Tribunal for a complete rehearing, with no preserved findings of fact;
2. The remitted hearing shall not be conducted by First-tier Tribunal Judge J Bartlett;
3. The First-tier Tribunal will issue any further case management directions it deems appropriate.

Signed: H Norton-Taylor

Date: 1 July 2021

Upper Tribunal Judge Norton-Taylor