



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

Appeal Number: PA/08519/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 15 November 2017**

**Decision & Reasons Promulgated
On 20 November 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE A M BLACK

Between

**M A M S
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs F Mustapha, solicitor
For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Egypt who appealed the respondent's decision to refuse his asylum and human rights claims on 27 July 2016. His appeal against that decision was dismissed by Judge of the First-tier Tribunal Ian Howard ("the FTTJ") in a decision promulgated on 5 April 2017.
2. I maintain the anonymity direction made in the First-tier Tribunal.
3. Permission to appeal was granted by Upper Tribunal Judge Plimmer on 20 September 2017 in the following terms:

“1. It is arguable that the First-tier Tribunal has unlawfully required the appellant to corroborate his claim, in circumstances where it would be very difficult for him to do so – see [21] and [22].

2. It is also arguable that the First-tier Tribunal failed to consider the plausibility of the appellant’s account against the country background evidence. It would be helpful if the appellant’s solicitors outline in writing the precise consistencies between the appellant’s claim and the country background evidence available the First-tier Tribunal.”

4. Thus the matter has come before me.

Background

5. The appellant claims his father, a farmer, was an active supporter of Al huriya wa al Adala, the Freedom and Justice Party, in Egypt. It is described as a non-religious political wing of the Muslim Brotherhood. The appellant’s father had not mentioned his membership to the appellant but this was a conclusion which the appellant himself had reached from various events: he saw a membership card in his father’s wallet; his father left the family home in August 2013 and was later seen by the appellant and his family on television attending a demonstration in Cairo. The appellant’s father did not return. The family, including the appellant, were arrested and detained. They were interrogated about their father. The appellant’s mother was detained longer and was mistreated. On her return she decided the appellant should leave Egypt.

Submissions

6. Mrs Mustapha, for the appellant, adopted the grounds of appeal to this tribunal. In addition, she noted the matter raised by Judge Plimmer in the first paragraph of the grant. Here the FTTJ had drawn an adverse inference from the lack of corroboration; that was an error of law (**ST (Corroboration – Kasolo) Ethiopia [2004] UKIAT 00119**). The appellant’s particular circumstances should have been considered: he had been a minor at the relevant time; the FTTJ had not adequately taken this into account in his consideration of the evidence. There was no reference at all to the background material which was consistent and relevant to the issue of credibility: the respondent’s operational guidance note (OGN) of November 2013 was before the FTTJ. There was a failure to take into account relevant material and an inadequate assessment of the evidence.

7. For the respondent, Mr Clarke, accepted there was no prejudice arising from Judge Plimmer’s reference to the issue of corroboration. There was a reference to the appellant’s age at [17]; the FTTJ had taken into account the appellant’s age in assessing the evidence. It was accepted there was no reference to the background material before the FTTJ but this was not fatal given the reasoning: the grounds failed to show that the background material undermined the findings of fact and credibility. It was not the case that the FTTJ found the scenario not credible; the existence of a demonstration in Cairo in August 2013 had been accepted by the respondent. Whilst the reasoning was brief, it was sufficient. Mr Clarke summarised the findings to demonstrate this. The cornerstone of the appellant’s case was his father’s activities and associations. His evidence was inconsistent on this. The appellant had failed to provide footage of the television coverage; this would have been in the public domain. Even if state-owned, the appellant’s solicitors could have sought or obtained a copy of the footage without reference to the appellant. As regards the claimed detention and mistreatment, there was no

suggestion that this was not in accordance with the background material which indicated round-ups, detentions, and the involvement of family members of activists. The difficulty for the appellant was that he had claimed he could not contact his mother yet a member of staff at the British Embassy had spoken to the appellant's mother who was willing to meet him at the airport on his return to Egypt. She had confirmed the appellant's address and details. Whilst it was accepted the FTTJ had not referred to the background material, even taken at its highest, this did not impact on the outcome of the hearing.

8. In reply, Mrs Mustapha accepted the information from the appellant's mother to the Embassy was relevant to the appellant's credibility. The fact that the information she had provided was consistent with the appellant being truthful.

Discussion

9. The parties' representatives agreed that the FTTJ had failed to refer to any of the background material which was before him. I am grateful to Mrs Mustapha for providing a list of essential reading, identifying relevant extracts from the background material which was before the FTTJ and which corroborated, it is claimed, the appellant's account. However, Mrs Mustapha accepted that most of the extracts cited as essential reading post-dated the events in 2013 on which the appellant relied before the First-tier Tribunal. That said there are the following relevant references:

- a. "... enforced disappearances, deaths in custody and the widespread use of excessive force by security forces since 2011..." (Amnesty International, "Amnesty International Report 2016/176: Egypt" 22 February 2017).
- b. "... repeated use of excessive and lethal force since January 2011... In particular, the authorities have failed to conduct a prompt, independent and impartial investigation into the violent dispersal of pro-Morsi protests at the Rab'a al-Adawiya Square on 14 August 2013, which lead to the death of almost 1,000 protesters. Furthermore, many of those currently detained have faced torture or other ill-treatment at the hands of the security forces. ..." (Country Information and Guidance – Egypt: Background information, including actors of protection and internal relocation (May 2015).
- c. According to the government, its security forces arrested almost 22,000 suspects in 2013 and 2014, including some 3,000 top and middle-level MR leaders and members. ..." (Amnesty International, 'Egypt: 'officially, you do not exist' – Disappeared and tortured in the name of counter-terrorism' 12 July 2016.
- d. "The Inter Press Service (IPS) reports in August 2013 that since Morsi's ouster, hundreds – possibly thousands – have been killed by security forces, including Brotherhood members and others opposed to renewed military rule (...). According to the IPS, fears of looming oppression – especially of Islamists – were increased in July 2013 when interior minister Mohamed Ibrahim announced the reactivation of a Mubarak-era police unit devoted to monitoring and combating "religious extremisms". (Operational Guidance Note: Egypt (v2 November 2013).
- e. "The Jamestown Foundation reported that the Egyptian Interior Ministry police broke up two pro-Mursi "sit-in" protest camps in Cairo on 14 August 2013, resulting in "hundreds in the pro-Mursi camp, killed and perhaps thousands wounded across the country:. The Egyptian Centre for Economic and Social Rights estimates that the death

toll during the dispersal of the Rab'a sit-in was estimated to be at least 377. According to the Ministry of the Interior, the nationwide 14 August death toll of 638 includes 43 police officers. Over the following three days, clashes between security forces and Muslim Brotherhood protesters, and anti-Muslim Brotherhood protesters led to at least 173 additional deaths, according to the Ministry of Health. Rights groups have documented approximate 1,600 deaths as a result of the ongoing violence since 14 August, both at the hands of the Egyptian military and police as well as Islamist groups and mobs. ... (Operational Guidance Note: Egypt (v.2 November 2013).

- f. Thousands of persons remained imprisoned whom authorities arrested during 2013 and 2014 due to their participation in demonstrations (some of which were peaceful); however, authorities released others who had completed their sentences. Authorities held such individuals under charges of attending an unauthorized protest, incitement to violence, or "blocking roads"." (US Department of State, '2016 Country Reports on Human Rights Practices: Egypt' 3 March 2017.
10. The respondent did not dispute there was an on-going protest in Rab'a al-Adawiya Square in Cairo at the relevant time and that over 100 people died in clashes with the security forces in July 2013. It was accepted that there were demonstrations which the appellant's father could have attended at the time claimed by the appellant.
 11. It is not in dispute between the parties that the FTTJ should have taken into account the background material and that it was relevant. The respondent's position is that the failure to do so was not material to the outcome.
 12. The background material before the FTTJ was highly relevant in that it was consistent with the appellant's account of his father's attending the demonstration in Cairo in August 2013, his seeing his father on television at the demonstration and taking an active role in it, his sight of his father's membership card, his father's subsequent disappearance and his family's arrest, detention and ill-treatment in detention.
 13. The appellant was aged about 14 in August 2013. He was a minor. The FTTJ states at [17] that "in making findings based upon what the appellant has said in the past I am cognizant of the fact he was a minor and thus limit my findings to the matters central to his claim". This is the only substantive reference to the impact of the appellant's minority on the assessment of the evidence. There is no reference, for example, to the application of the Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance. While not yet handed down, that guidance was reinforced in **AM (Afghanistan) v SSHD & Or [2017] EWCA Civ 1123**, a case concerning an Afghan minor. In the latter case it was held that solely focussing on the credibility of the appellant's account and not having regard to objective evidence testifying to the appellant's vulnerability or the risk to the appellant of return had led to the proceedings being neither fair nor just.
 14. In the present case, the FTTJ has paid lip service to the appellant's minority. He has not identified the appellant's age at the date of the events in question or how his age impacted on his ability to give a consistent account. The FTTJ refers to the appellant having prepared his statement in the "benign environment" of his solicitors office (or his home)". There is no evidence to support that proposition which, in any event, is put in the alternative.
 15. The FTTJ appears to draw an adverse inference from the appellant's failure to produce evidence of the existence of television footage of his father at the demonstration. This is done

without consideration of whether it would be reasonable for the appellant to seek to obtain such footage. In **ST (Corroboration - Kasolo) Ethiopia [2004] UKIAT 00119** the Tribunal said that it was a misdirection to imply that corroboration was necessary for a positive credibility finding. However, the fact that corroboration was not required did not mean that an Adjudicator (as it then was) was required to leave out of account the absence of documentary evidence, which could reasonably be expected: the Adjudicator was entitled to comment that it would not have been difficult to provide the relevant documents in this case. In the present case, the FTTJ has not considered the issue of whether such footage could reasonably be expected to be obtained. Given the passage of time, the appellant's minority (and therefore reliance on his solicitors), the appellant's age at the time the footage was broadcast and his evidence that he was called to the television by his mother (calling into question whether he would know the news channel in question), it could not be assumed the appellant would be able to obtain the footage in question. This is not a case where the FTTJ has drawn an adverse inference from any failure to seek to obtain it.

16. Similarly, the FTTJ states at [22] "there is no evidence beyond what he says to support his claim to have been arrested and maltreated along with his siblings and his mother." The inference from this paragraph is an adverse one. It is not clear what the FTTJ expected the appellant to have produced; it was not claimed that any arrest warrant or other documentation had been issued in connection with the arrests and detentions.
17. The FTTJ refers to the evidence of a telephone call from the British Embassy to the appellant's mother, at the telephone number he has provided. The FTTJ was right to draw an adverse inference from inconsistency as between the appellant's account that he was not in contact with his mother and the Embassy's telephone contacted with his mother on the landline the appellant had provided. Furthermore, his mother and siblings had moved from the family's previous address which suggests the appellant had the telephone number to their current home. This is a significant inconsistency.
18. Failure to refer to the objective material in the assessment of credibility of an appellant who was a minor at the date of the events which gave rise to his asylum claim is an error of law. Taken together with the cursory manner in which the FTTJ noted the appellant's minority, without considering specifically its impact on the individual circumstances of the appellant and his ability to give a consistent account, is a material error of law impacting on the assessment of credibility. I make the observation in passing that the FTTJ has not cited accurately the appellant's evidence at [14] in that he appears to cite the reasons for refusal letter when he states "He and brothers [sic] were interrogated for many hours about the whereabouts of their father and his whereabouts [sic]". This is not an accurate reflection of the appellant's answer to question 61 in interview; he said "they start asking us about my father. We told them we don't know". The appellant did not state he was asked about his father's "whereabouts".
19. Overall the reasoning in the decision is brief indeed and it can be inferred, given the paucity of the reasoning, that the FTTJ has given weight to the failure of the appellant to provide corroborative evidence [21], [22] and [23]. In essence the FTTJ has given only two substantive reasons for disbelieving the appellant: the discrepancy between his belief that his father was politically involved as against his finding his father's membership card. However, here the FTTJ makes no reference to the appellant's explanation for this discrepancy (at [32] of his appeal statement); there is no assessment as to whether that explanation was reasonable. The only other reason for disbelieving the appellant is the discrepancy between the appellant's denial of contact with his family and the telephone call from the Embassy to his mother.

Given the minority of the appellant at material times, the failure of the FTTJ to refer to the background material and his drawing adverse inferences from the failure of the appellant to provide corroborative evidence amount to material errors of law. For these reasons, the decision must be set aside.

20. The errors of law, taken together, are central to the FTTJ's assessment of the credibility and reliability of the appellant's account. Both parties' representatives agreed that in such an event, the matter should be remitted to the First-tier Tribunal for a fresh hearing. That is an appropriate course for the reasons I have set out above.

Decision

21. The making of the decision of the First-tier Tribunal involved the making of errors on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal, to be dealt with afresh, pursuant to Section 12(2)(b)(i) of the Tribunal Courts and Enforcement Act 2007 and Practice Statement 7.2(v), before any judge aside from Judge Ian Howard.

Signed **A M Black**
Deputy Upper Tribunal Judge A M Black

Dated 17 November 2017

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 her or any member of their 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.

Signed **A M Black**
Deputy Upper Tribunal Judge A M Black

Dated 17 November 2017