



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

PA/01713/2020

THE IMMIGRATION ACTS

Heard by “*Microsoft Teams*”  
from George House  
on 25 August 2021

Decision & Reasons Promulgated  
On 8 September 2021

Before

UT JUDGE MACLEMAN

Between

**M E S**

Appellant

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Maguire, Solicitors

For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Egypt, aged 24. FtT Judge Bell dismissed his appeal by a decision promulgated on 23 February 2021. His grounds of appeal to the UT assert error in assessing credibility at [19 – 37] of the decision.
2. The grounds focus on absence or inadequacy of reasons in respect of a psychological report stating that inconsistencies might be expected in the appellant’s account, and in respect of both the appellant and his brother being vulnerable witnesses.

3. Designated Judge Shaerf granted permission on 16 April 2021, on the view that the judge "... arguably erred in her treatment of the two medical reports in her assessment of credibility ... the scarring report stated that scarring is consistent with claimed torture and ill-treatment but the judge arguably failed adequately to explain why she did not accept this part of the report. Similarly, she arguably erred in not explaining why she rejected the psychological report diagnosing PTSD or why she accepted it but did not find it an adequate explanation for the inconsistencies ... in the evidence".
4. Under the heading "medical evidence", the "scarring" report, by Mr R Crawford, is summarised, briefly but accurately, at [16 - 17]. Under the heading "conclusions on the medical evidence" at [40-41], the judge accepts the principal finding in that report, but declines to find that the injury was sustained as described by the appellant.
5. Mr Winter, correctly, accepted that this report was not "rejected", and did not further press this aspect of the challenge, except to observe that it would have been open to the judge, and would be open in any rehearing, to find that it supports the appellant's account of events.
6. Mr Winter concentrated on the judge's treatment of the report of Dr F Morrison, consultant clinical psychologist. This report states that the appellant "presented with difficulties including concentration and memory problems" and with "difficulties with regards to providing detailed account of events he had experienced". In his conclusion, Dr Morrison says "... it is reasonable to assume there may be inconsistencies" in recollecting events from when he experienced trauma. His memory of those events is "likely to be incomplete, and he may present in an inconsistent manner".
7. This report is noted, again briefly but accurately, at [18].
8. Under the heading "credibility" and the sub-heading "date of arrest" the judge deals with the appellant saying firstly that he was arrested in January 2013 but later that it was in July 2013. At [23] she records that he blamed his poor memory. She deals next with his brother's oral evidence, changing the date from July 2013 to July 2014, and says that he "could not have been clearer." At [26-27] she finds that the dates "simply do not fit together"; takes into account "the factors set out in [23] above"; and finds such significant inconsistency that "some adverse weight must be attached".
9. Mr Winter observed that this reasoning refers back only to the appellant saying he had a poor memory and says nothing about whether the medical evidence summarised at [18] played any part in the assessment. He said that there was either an omission to explain why the report was not accepted, or if it was accepted, what part it played in the conclusion reached. He further submitted that there was uncontested evidence that the appellant's brother suffered from mental health issues (which had led to his appeal being allowed) but that was not taken into account.

10. Under her next sub-heading, “reporting to the authorities in Egypt after leaving hospital”, the judge deals with “significant inconsistencies” over timing and frequency, and at [31] finds that although she takes into account “his difficulty with memory” she finds it “very unlikely that he could fail to recall whether or not he reported to the police before leaving Egypt and the difference between 3 weeks and several months is a significant one”.
11. Mr Winter said this finding was flawed in the same ways as the finding at [27], and that the flaws were not cured by reference to psychological symptoms at [42] and by “looking at the evidence in the round” at [43].
12. Mr Whitwell observed that the medical reports did not say the appellant was unfit to give evidence, or liable to give “an entirely discrepant account”. He said that the judge directed herself correctly at [15] on approaching the evidence in context of medical evidence about the mental health of both the appellant and his brother, and applied those directions at [27, 31 and 34], “bookended” at [37] by the justified conclusion that medical and other evidence did not adequately account for the major discrepancies. He acknowledged that apart from the section headed “section 8” on failure to claim in other countries for several years, he could not point to reasoning based on anything but discrepancies. He submitted that there is no rule that the case of an appellant with mental health issues must be taken at its highest possible value, and that the grounds resolved into no more than disagreement with adverse credibility findings for which a legally adequate explanation was given.
13. Mr Winter in reply said that the decision at [37] did not add anything to fill in the gaps between the medical evidence and the judge’s findings, and reasoning to support those conclusions was absent.
14. I reserved my decision.
15. The appellant presented evidence that he was liable, for mental health reasons, not to be a consistent witness. I readily accept the submission that there is no rule that he was thereby entitled to the most favourable possible reading of his evidence. However, in such a case care needs to be taken not to found only on discrepancies over timing and frequency of events, and to look at whether discrepancies are of a nature not explained by psychological issues, and whether there are other reasons to find an account unreliable. Mr Whitwell identified other reasoning only under “section 8”.
16. The reasoning under the heading “date of arrest”, read closely, opens the way to the criticism that [27] takes account only of claimed difficulty of recollection, and not of support for that in the expert evidence.
17. That finding is only of “some adverse weight”, but the same criticism attaches to the finding at [31], “very unlikely”, which is so trenchant as to be near to determinative.

18. Decisions should not be undermined by too minute a search for errors or omissions. The judge was bound in parts of her decision to go into a series of details. In the decision as a whole, she repeatedly reminds herself to view the evidence in the context of the psychological report.
19. The judge's point about "section 8" is quite strong. Oddly, it is dealt with only after stating an overall adverse credibility conclusion. The judge may have had in mind the need for caution in reaching conclusions based on failure to claim promptly, or elsewhere; but this remains a matter to be considered in the round along with everything else. If there was an error in that respect, it does not in itself tend against the appellant, but it does perhaps reflect an approach which in reality reached decisive conclusions point-by-point rather than in the round.
20. At [42] the judge finds that "if" the appellant experiences the psychological symptoms reported to Dr Morrison those are more likely to result from difficult circumstances rather than his claimed experiences in Egypt. It was obviously the judge's task to resolve whether those experiences were reasonably likely to have happened, but she does not explain her apparent doubt whether the *symptoms* were genuine, and it was not in dispute that he had suffered serious trauma.
21. At [50], under the heading "article 3 - medical grounds", the judge says that although the appellant has "reported symptoms of PTSD there is no formal diagnosis" and he is not being treated. However, the report by Dr Morrison (a highly qualified expert) states that the appellant "meets the diagnostic criteria for PTSD".
22. The judge took evident care in reaching her decision, and had to deal with matters in some order. However, drawing the above matters together, the appellant's grounds and submissions reach beyond disagreement on the facts. They disclose a misunderstanding of whether the report included a diagnosis; an absence of explanation whether or why the judge had reservations about the report; and a deficit in reasoning why it did not sufficiently resolve doubts arising from inconsistencies in the evidence.
23. Parties agreed that if error were to be found, the outcome should be as follows.
24. The decision of the FtT is set aside, and the case is remitted for a fresh hearing, not before Judge Bell.
25. An anonymity direction is in place.

Hugh Macleman

26 August 2021  
UT Judge Macleman

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### NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A **"working day"** means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.