



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01472/2020**

THE IMMIGRATION ACTS

**Heard at Field House
On 1 September 2021**

**Decision & Reasons Promulgated
On 28 September 2021**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

**DRZI
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Gajjar, Counsel instructed by Susan Paul Solicitors
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Egypt. Her date of birth is 7 April 1984. It is the present practice of the First-tier Tribunal to anonymise Appellants in appeals raising asylum and other international protection claims. However, it is not clear to me whether this Appellant has been anonymised. If so I direct this to continue and if not I make an order to anonymise her.
2. The Appellant was granted permission by Judge of the First-tier Tribunal J K Swaney on 12 May 2021 against the decision of First-tier Tribunal Judge R Hussain to dismiss her appeal on protection grounds and under Article 8

ECHR. Thus the matter came before me in order to determine whether the First-tier Tribunal erred in law.

3. The Appellant's appeal against the decision of the Secretary of State was dismissed by the First-tier Tribunal in 2015. The Appellant made further submissions which gave rise to the decision of 27 January 2020 against which she appealed and which is the subject of these proceedings.

The error of law

4. Judge Hussain heard evidence from the Appellant and her partner, BH. The judge did not set out their evidence but stated that he had regard to it. Part of the further submissions on which the Appellant relied giving rise to the decision which was the subject of the appeal before Judge Hussain was a court judgment (AB/11/25) together with a letter from a lawyer in Egypt (AB/7). These documents were not before the First-tier Tribunal. The first ground of appeal relied on by Mr Gajjar concerned the Egyptian Court judgment and the reasons given by the judge for finding that the document was not reliable. The judge gave five reasons for concluding that the document was not reliable. The first reason he gave, according to Mr Gajjar, involves a mistake of fact and a failure to have regard to material evidence. The first reason the judge gave reads as follows:-
 - (i) The Appellant submitted a letter to her in an email from Mr Ramy Jamal Sabry who said to be her lawyer. This letter states that the lawsuit was lodged against the Appellant on 3 October 2014, being one month before she left. However, the judgment refers to the hearing date of 7 September 2016 and states that the case itself, having been filed in 2016.
5. I accept that the judge's assessment of the evidence is incorrect. The judgment of the Egyptian Court states that the case was lodged on 3 October 2014 and not 2016. I find that the judge rejected the evidence on the basis of a misunderstanding.
6. The second reason given by the judge for finding the document unreliable reads as follows:-
 - (ii) Her appeal before FTTJ Sangha was on 3 March 2016. However, she makes no mention of such allegation of either police or court proceedings at her asylum claim or appeal before FTTJ Sangha. Indeed, the main thrust of her fear and concern was the risk of FGM. The only concerns she expressed about her being a Coptic Christian was that of harassment and discrimination from the Muslim Brotherhood. No specific detail was given as to why she herself would be singled out".
7. The grounds assert that the judge overlooked the Appellant's evidence in her witness statement which confirmed that she did not have the judgment at the time of the hearing before the First-tier Tribunal having

only recently received it through her lawyer. The ground misrepresents the finding of the judge. The judge refers to her having not mentioned allegations of either police or court proceedings. The judge does not question the failure to present the Egyptian Court judgment at the hearing. Indeed, the decision of the court in Egypt was made on 7 September 2016, post the date of the hearing before Judge Sangha. I do not accept that the finding of the First-tier Tribunal at paragraph 18(ii) contains an error of law. The judge was entitled to take into account the basis of the previous claim. I asked Mr Gajjar at the hearing if there was any evidence from the Appellant explaining when she became aware of the allegations, bearing in mind that the proceedings in Egypt were filed in 2014. He was not able to point me to any evidence in this regard. He drew my attention to the judge not having made a record of the Appellant's oral evidence. However there is no legal requirement for the judge to do so. It is not raised in the grounds of appeal that the Appellant gave evidence at the hearing which was not taken into account.

8. The third reason given by the judge for rejecting the reliability of the court document reads as follows:-

(iii) The Appellant was alerted to the fact that the Respondent found the copy of judgment documents submitted to be of poor quality. Whilst an Appellant fleeing persecution may not be expected to obtain such documents from the authorities they are fleeing from. In this instance the Appellant claims to have been notified of this judgment by her lawyer representing her. In such circumstances I would expect her to be able to provide an original or suitable clear and certified copy of the original.

9. The grounds challenge this finding on the basis that the judge did not take into account the evidence from the lawyer which is as follows:

“According to court rules, it is not possible to obtain original case papers and no legal action can be taken in the case, due to the absence of a formal power of attorney. Notwithstanding that I read the papers of the case and have also obtained a copy of the ruling.”

10. I accept that the finding of the judge does not disclose engagement with the evidence of the lawyer. Furthermore Mr Tufan at the hearing before me conceded that the judgment from the Egyptian Court that he has in his file was legible, which undermines the finding of the judge.

11. The fifth reason given by the judge is as follows:-

(v) The letter from the lawyer dated 1 July 2019 is itself more akin to a letter advocating her asylum claim rather than informing her of the progress or outcome of any proceedings. The challenge to this finding is that it is irrational to use the contents of the lawyer's letter to undermine the reliability of the court's judgment in this way and that the judge has placed excessive weight on immaterial factors.

12. It is not clear to me what prompted the letter to the Appellant from the Egyptian lawyer. However, I find that the judge's finding discloses at least that the judge took into account immaterial matters. There is in my view no connection between the content of the letter insofar as it is capable of supporting the Appellant's claim on protection grounds and the reliability of the court judgment. I note that the letter is not a letter addressed personally to the Appellant seeking to inform her of the progress of her case. The letter does not indicate to whom it was sent and for what purpose.
13. While I do not accept the ground relating to the reason given by the judge at paragraph 18(ii) and there is no challenge to the reason given at 18 (iv) , I accept that three out of the five reasons given by the judge for finding the document not to be reliable are flawed for the reasons that I have given. It is not possible for me to conclude that had those errors not occurred the judge would have reached the same conclusion, notwithstanding the application of Devaseelan and SSHD [2002] (UKAIT 00282).
14. Grounds 2 and 3 relate to Article 8. The judge did not accept that the Appellant met the definition of a partner for the purposes of Appendix FM because she was not able to establish that she had lived with BH for two years. The reason for this is set out at paragraph 23. The reasons can be summarised. Although the Appellant claims that she was in a relationship with BH for about four years the judge said that there was no evidence they are legally married. The judge said that the Appellant claims to have lived with BH since 2015 at an address in Nottingham. However, the judge did not accept this because the Appellant had been accommodated and supported by the Respondent until at least 4 October 2016. While the judge did not accept that they had lived together since 2016, it is not clear why he was not satisfied that they had been living together for two years.
15. While I accept that the judge went on to consider insurmountable obstacles and Article 8 generally, having rejected the Appellant's evidence that she and BH had been living together for a period of two years, it is not clear from the decision what the judge made about the relationship and whether or not he accepted that the couple were living together at the date of the hearing or indeed at any time. Furthermore, the failure to consider the best interests of the BH's minor child is a material error in the Article 8 assessment.
16. For the above reasons I set aside the decision of the judge, having found the Appellant's grounds of appeal made out. There are a number of material errors. None of the findings made by the judge are sustainable. It is necessary for there to be a de novo hearing.
17. In the circumstances taking into account the Practice Statement of the Immigration and Asylum Chambers of the First-tier and Upper Tribunal on 25 September 2012, specifically paragraph 7. In light of the nature and extent of the judicial fact-finding which is necessary in order for the

decision to be remade I consider it appropriate to remit the case to the First-tier Tribunal.

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 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 Joanna McWilliam

Date 13 September 2021

Upper Tribunal Judge McWilliam