



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

Appeal Number: AA/00644/2013

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 1<sup>st</sup> July 2013**

**Determination Sent  
On 1<sup>st</sup> July 2013**

**Before**

**UPPER TRIBUNAL JUDGE MARTIN**

**Between**

**MR MOHAMED ALBARENI RIIZG  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr K Wood (Rochdale Law Centre)

For the Respondent: Mr A Tan (Home Office Presenting Officer)

**DETERMINATION AND REASONS**

1. The Appellant is a citizen of Egypt born on 26<sup>th</sup> February 1980. He appeals to the Upper Tribunal against a decision of the First-tier Tribunal (Judge Heynes) dated 21<sup>st</sup> March 2013 dismissing his appeal against the Secretary of State's decision to refuse him asylum and to remove him to Egypt.

2. Permission to appeal was originally refused by a Judge of the First-tier Tribunal but then granted by Upper Tribunal Judge Chalkley on 20th May 2013. Judge Chalkley found it arguable that the judge may have erred by not making clear findings on the core of the Appellant's claim; namely his claimed political activities and suffering at the hands of the Muslim Brotherhood when they allegedly attacked him on 1st August 2012.
3. Thus the matter came before me. My first task is to decide whether First-tier Tribunal Judge Heynes made an error of law and if so whether and to what extent the determination should be set aside.
4. Mr Wood appeared before me as he had before Judge Heynes and it was he who drafted the grounds seeking permission to appeal. Mr Wood expanded upon the grounds before me.
5. He argued firstly that the Judge had erred by misdirecting himself in law in relation to "an apparent requirement of the Appellant to have suffered persecution before being entitled to succeed in his claim for asylum in the United Kingdom". The grounds suggest that at paragraph 32 of the determination, the Judge criticised the Appellant's evidence on the basis that no attempt was made on his life in the 12 months prior to his leaving Egypt. Mr Wood submitted it would be unreasonable to require an Appellant to have suffered severe physical harm in order to succeed in his asylum claim and referred to the case of FK (persecution-refugee-political writer) Iran CG [2002] UKIAT 01328 which stated that it was not necessary for someone who has a genuine fear of persecution to wait until it happens before deciding to leave the country.
6. Mr Wood is of course quite correct and had the Judge done so it would indeed have been an error of law. However, what the Judge actually said was rather different from the gloss being put on it by Mr Wood. What the Judge said at paragraph 32 was that:-

"Whilst, on the one hand, the Appellant claimed that he would be killed by the Muslim Brotherhood on return, if his own evidence is to be taken at face value, no attempt was made on his life even in the last 12 months of his time in Egypt. At worst, he experienced some harassment, an assault and a verbal threat. His own evidence does not suggest that he has been singled out or targeted."

This also has to be set against the Judge's finding that the Appellant had not been a member/supporter of 6<sup>th</sup> of April Movement, the reason the Appellant claimed the Muslim Brotherhood were after him. I can see no error in the Judge's approach. The Appellant's case was that he was in such danger from the Muslim Brotherhood that he was forced to flee the country. However, he waited 12 months from when he says the threat took place before he left and during that time no harm came to him. The Judge's comment is entirely appropriate in the circumstances. There was no incident that the Appellant relied upon 12 months later to instigate his departure.

7. The second ground relied upon by Mr Wood is that the Judge had erred in failing to apply the appropriate guidance contained in case law when considering the documentary evidence. He referred to paragraph 43 of the determination wherein the Judge said this:-

"I find the documentation that the Appellant claims to have obtained, by his wife, from the hospitals is unreliable given the inconsistencies in the medical evidence and the Appellant's lack of reliability overall"

8. It is suggested that the Judge failed to demonstrate that he had considered the documentary evidence in the round by taking into account the background country evidence on the prevalence of violence directed to individuals arrested and detained by the Egyptian authorities.
9. The Judge paid particular attention to the documents produced by the Appellant. He reminded himself at paragraph 19 of the determination that the burden was on the Appellant to establish that the documents were reliable and that in assessing reliability, he must have regard to the documents as a whole in the light of the surrounding evidence.
10. The Judge first dealt with the Appellant's marriage certificate which he indicated was not contentious. He then turned his attention to what he called medical reports but were in reality documents given to the Appellant upon his release from hospital. The Judge considered the earliest document, dated 13th June 2004 which recorded that the Appellant had been in hospital for three days for a procedure related to a haematoma around his left testicle and the left part of his thigh. The Judge correctly noted that was partly, but not entirely, consistent with the description that the Appellant gave of his treatment at this time, namely that he had been beaten, sexually abused, given electric shocks and suffered an injury to his head and penis.
11. The Judge then dealt with a report which is undated but stated that on 25th June 2005 the Appellant had a deep wound below his right ear and abrasions on his face and neck. This, the Judge correctly found, was not consistent with the description of treatment the Appellant gave at his interview when he claimed to have suffered the same treatment as before and additionally that his finger and toenails had been removed. The inconsistencies noted by the Judge in that report are startling.
12. Similarly, at paragraph 23 the Judge turned his attention to a document dated 3rd January 2009 which was also irreconcilable with the Appellant's evidence when he stated that he had been arrested at the end of December 2008 and detained for 35 days. Although he sought to alter the dates at the hearing suggesting he had been arrested at the beginning of December; it still would not have been possible to have been discharged from hospital on 3rd January 2009 if he had been detained for 35 days. Furthermore, that report referred to head injuries but the Appellant's account was that he received the same treatment as before. The Judge did not accept the Appellant's explanation for not referring, at the hospital, to

having his fingernails removed, namely because he was in too much pain and was mentally ill.

13. The Judge also queried the reliability of the document given that the emotive language used (a reference to pitiless torture) was not suggestive of a medical report. The Judge also noted that the document referred to methods of torture such as burning with cigarettes and being subjected to loud noises causing loss of hearing. These however did not feature in the Appellant's own description of the treatment he had been subjected to and there is no reference in the document to the sexual abuse which the Appellant claimed happened on each of his detentions. The Judge noted that the report gave no indication that he received treatment for his "severe depression" or that he was recommended for any such treatment. The Judge noted that there was no subsequent evidence of the Appellant having treatment for severe depression and that although an adjournment had been granted for the Appellant's representatives to obtain a medical report, none was placed before him nor was there any evidence that the Appellant had either sought or was receiving any form of treatment or medication in the UK.
14. It is hardly surprising given those very significant discrepancies between the Appellant's claims and what is contained in the documents that the Judge found them to be unreliable and certainly not supportive of the Appellant claims. The Judge's findings were entirely open to him on the evidence.
15. The Judge dealt with the submission by Mr Wood that the treatment described by the Appellant was consistent with the background evidence, which he accepted in broad terms was the case. However, the fact that treatment described is consistent with background evidence does not mean that it happened to the Appellant and clearly the Judge was not satisfied, on the basis of the significant difficulties in the evidence that in this case it had.
16. The Judge went on to consider other difficulties in the Appellant's evidence. One was that when he first arrived in the UK he gave a different name, a different date of birth and a different nationality, claiming to be a national Syria and it was on that basis he claimed asylum. It was only at his substantive interview that he decided that he was Egyptian and gave the current reason for needing international protection. The Judge rightly pointed out that that makes no sense. If the Appellant was in truth in danger of persecution in Egypt, there would be no reason whatsoever not to have said so at the outset.
17. Other credibility issues noted by the Judge was the fact that the Appellant had spent 12 months without problem prior to leaving the country and his claim to have been involved with the 6<sup>th</sup> of April Movement since 2004 when it was not formed until 2008.

18. Additionally, the Judge found the Appellant to have been an evasive witness and that he had to repeat questions in order to extract answers from him.
19. The Judge specifically found at paragraph 42 that he rejected the core of the Appellant's account. He had not established that he was a supporter of 6<sup>th</sup> of April Movement and he rejected his claim to been targeted by the Muslim Brotherhood.
20. I find therefore there is no error in the way in which the Judge assessed the documentary evidence placed before him or credibility as a whole. Mr Wood argued that the Judge was not entitled to make a finding based on the date upon which the 6<sup>th</sup> of April Movement was formed because he did so with reference to background evidence that was not specified by him. However, the Letter of Refusal clearly refers, at paragraph 14, to there being available country information stating that the Movement in question was only established in 2008. Mr Wood said the country information referred to in the Letter of Refusal was not produced to the Appellant's representatives. It was not specified by the Judge and therefore reliance should not have been placed upon it and that finding was not open to the Judge. I reject that argument. The Appellant and those representing him were well aware that was an issue to be dealt with by the Appellant, namely that his claim was not credible because he joined a group supposedly four years before it was formed. If there is evidence available to show the group was formed in 2004, then the Appellant should have produced it; he did not. In any event, that is only one of numerous adverse credibility points which were entirely open to the Judge.
21. Mr Wood also suggested that the Judge had made so many adverse credibility findings in relation to this Appellant that he was not going to believe anything he said. That is an unwarranted and unjustified criticism. The Judge's decision was based on the evidence before him. The evidence was woefully short of sufficient to lead to a decision in the Appellant's favour.
22. The First-tier Tribunal did not make an error of law in its determination of this appeal and its decision shall stand. The appeal to the Upper Tribunal is dismissed.

Signed

Dated 1<sup>st</sup> July 2013

**Upper Tribunal Judge Martin**