



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/00936/2014

THE IMMIGRATION ACTS

Heard at Field House, London
On 24 September 2014

Determination Sent
On 20 October 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MOUNA HANNA

Respondent

Representation:

For the Appellant: Ms A Everett, Home Office Presenting Officer

For the Respondent: Ms E King, instructed by Fadiga & Co Solicitors

DETERMINATION AND REASONS

1. Whilst this is an appeal by the Secretary of State for the Home Department, for convenience I will refer to the parties in the determination as they appeared before the First-tier Tribunal
2. The appellant, a national of Egypt, appealed to the First-tier Tribunal against a decision made by the respondent to refuse her application for asylum and to remove her from the UK. Judge of the First-tier Tribunal Herbert allowed the appeal. The Secretary of State now appeals with leave to this Tribunal.

Background

3. The appellant claims that she is a Coptic Christian who has a son in the UK and two daughters in the USA. She is separated from her husband who lives in Saudi Arabia. She claims that in 2012 and 2013 she received threatening phone calls and text messages from the Muslim Brotherhood telling her to change her religion. She says that graffiti was written on her door on three occasions and that she had water thrown at her door. On 27 December 2013 she was near her house when two people on a motorcycle snatched her crucifix necklace and her bag; she believed these men were from the Muslim Brotherhood. She went to the police but she says they were not interested in the religious aspect of the crime. She was lonely and suffered from depression. On 29 December 2013 she came to the UK to spend Christmas with her sister, her son and her cousin. On 31 December 2013 she received an email and phone call from a friend to tell her that the person responsible for her apartment block had told her that some unknown people were looking for her and her ex-husband got in touch to say that her house had been broken into. The appellant submitted a psychiatric report to the First-tier Tribunal which said that she suffered from PTSD and that she was at high risk of suicide if she was to return to Egypt.
4. The First-tier Tribunal Judge accepted that the appellant is a practising Coptic Christian and that she lived in a neighbourhood in Cairo where she had been targeted during the recent troubles. He found that as a single Christian elderly woman with significant mental health issues living on her own she would be particularly vulnerable to persecution or harassment. The Judge said [55];

“I am satisfied therefore that it is the combination of her vulnerability as a person suffering from a significant risk of suicide and her vulnerability as a Christian woman which places her in a position of high risk”
5. The Judge found that the appellant had been the victim of persecution in the past and that it would be difficult for her to obtain protection. He also found that it is not feasible ‘*without undue hardship*’ for the appellant to relocate to another part of Egypt and that if returned she would be living in seclusion and isolation ‘*barricaded in her flat without being able to conduct a normal life or attend church*’ [59]. The Judge allowed the appeal under the Refugee Convention and Articles 2, 3 and 8 of the ECHR.
6. The respondent’s grounds of appeal contend that;
 - The Judge made a material misdirection in law by failing to apply the risk categories identified in MS (Coptic Christians) Egypt CG [2013] UKUT 00611 (IAC);
 - The Judge erred in failing to apply the six stage test outlined by the Court of Appeal in J v SSHD [2005] EWCA Civ 629 when making the finding that the appellant is at risk of suicide;

- The Judge failed to identify arguably good grounds of appeal for considering the appeal under Article 8 and therefore failed to apply the guidance in Gulshan (Article 8 -new Immigration Rules- correct approach) [2013]UKUT 640 (IAC);
- The Judge failed to provide any or adequate reasons for finding that the appellant was targeted by the Muslim Brotherhood; that the appellant will be at heightened risk because the Muslim Brotherhood has been banned; that the appellant is at risk of suicide; for distinguishing the case of MS; and for finding that the appellant's circumstances are exceptional and not covered by the Immigration Rules.

Error of Law

7. In the Rule 24 response and at the hearing Ms King submitted that the first ground is misconceived because the risk categories in a country guidance case are not exhaustive or exclusive.
8. In MS the Upper Tribunal set out the following country guidance as summarised in paragraph 151;

“Country guidance

1. Notwithstanding that there is inadequate state protection of Coptic Christians in Egypt, they are not at a general risk of persecution or ill-treatment contrary to Article 3, ECHR.
2. However, on current evidence there are some areas where Coptic Christians will face a real risk of persecution or ill-treatment contrary to Article 3. In general these will be (a) areas outside the large cities; (b) where radical Islamists have a strong foothold; and (c) there have been recent attacks on Coptic Christians or their churches, businesses or properties.
3. On the evidence before the Upper Tribunal, the following are particular risk categories in the sense that those falling within them will generally be able to show a real risk of persecution or treatment contrary to Article 3, at least in their home area:
 - (i) converts to Coptic Christianity;
 - (ii) persons who are involved in construction or reconstruction/repair of churches that have been the target for an attack or attacks;
 - (iii) those accused of proselytising where the accusation is serious and not casual;
 - (iv) those accused of being physically or emotionally involved with a Muslim woman, where the accusation is made seriously and not casually.
4. Coptic Christian women in Egypt are not in general at real risk of persecution or ill-treatment, although they face difficulties additional to other women, in the form of sometimes being the target of disappearances, forced abduction and forced conversion.
5. However, depending on the particular circumstances of the case, Coptic Christian women in Egypt aged between 14-25 years who lack a male protector, may be at such risk.
6. If a claimant is able to establish that in their home area they fall within one or more of the risk categories identified in 3 (i)-(iv) above or that they come from an area where the local Coptic population faces a real risk of persecution, it will not necessarily follow that they qualify as refugees or as beneficiaries of subsidiary protection or Article 3 ECHR protection. That will depend on whether they can show they would not have a viable internal relocation alternative. In such cases there will be need for a fact-specific assessment

but, in general terms, resettlement in an area where Islamists are not strong would appear to be a viable option.

7. None of the above necessarily precludes a Coptic Christian in Egypt from being able to establish a real risk of persecution or ill-treatment in the particular circumstances of their case, e.g. if such an individual has been the target of attacks because he or she is a Coptic Christian.”

9. The Upper Tribunal therefore found in MS that there is inadequate state protection for Coptic Christians in Egypt, that there are particular categories of people who will generally be able to show a real risk of persecution and that, although they face difficulties, Coptic Christian women in Egypt are not in general at real risk of persecution or ill-treatment. However paragraph 7 above states that none of the country guidance necessarily precludes a Coptic Christian in Egypt from being able to establish a real risk of persecution or ill-treatment in the particular circumstances of their case for example where the person has been the target of attacks because of their religion. The Judge did not therefore err in considering that the appellant was capable of establishing that she faces a real risk of persecution in the particular circumstances of her case. The Judge was not prohibited from making the finding he did by the guidance in MS.
10. In the Rule 24 response and at the hearing Ms King submitted that the Judge did not determine the case on the basis of the appellant's risk of suicide but, instead, the risk of suicide was taken into account as part of the assessment of the appellant's position and personal circumstances as set out in paragraph 339J of the Immigration Rules and referred to in HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department [2010] UKSC 31.
11. The six stage test set out in J v SSHD relates to determining the risk of suicide in the context of Article 3 of the ECHR. The Judge in this case took into account the appellant's personal circumstances in assessing the risk of persecution, including her account of the harassment she previously suffered, the medical evidence (including the diagnosis of PTSD and the risk of suicide), her age, the lack of family support and financial support in Egypt, and her living conditions there in determining the asylum appeal. The Judge did not determine this case on the risk of suicide issue alone. The Judge was entitled, indeed obliged, to take all of this evidence into account. I am satisfied that the Judge did not err in his approach to the evidence of the risk of suicide in this context.
12. The grounds of appeal contend that the Judge erred in considering the appeal under Article 8 having found that she was not eligible for leave under Appendix FM and paragraph 276ADE. However the Judge did consider the relevant case law before going on to decide that there was an arguable case that the appellant's case should be considered under Article 8. The Judge made clear that the reasons for doing so were the same as those given in relation to the asylum appeal [67]. I am satisfied that the judge gave adequate reasons for going on to consider Article 8 and that this was a course of action open to him for the reasons given.

13. The grounds of appeal contend that the Judge failed to provide any or adequate reasons for findings on material matters. However the Judge set out all of the oral evidence before him and was entitled to accept the appellant's evidence in relation to past events in Egypt. The Judge set out the relevant parts of the medical evidence in relation to the diagnosis of PTSD and the risk of suicide. The Judge said that he accepted that evidence in the context of the appellant's lack of family support in Egypt [54]. I am satisfied that the Judge has considered the medical evidence and accepted it for the reasons given. These reasons are adequate.
14. The grounds of appeal contend that the Judge gave inadequate reasons for accepting that the appellant was targeted by the Muslim Brotherhood and that she would be at heightened risk because the Muslim Brotherhood has been banned. However the Judge referred to the expert report before him and it is clear from the decision that this was relevant to the Judge's assessment as to the lack of protection available to the appellant [58]. This too is a sufficient reason for accepting the appellant's account in relation to past persecution and the risk of future persecution. I accept that the Judge did not state the source of the assertion that the situation of the appellant would be exacerbated by the banning of the Muslim Brotherhood [52]. However this finding is not material given the rest of the findings that the appellant, because of her particular vulnerability, would be at risk of persecution and would be unable to access adequate state protection. It is clear from the determination that these personal factors informed the Judge's decision that there was not viable internal relocation option for the appellant when he said that the appellant could not relocate without '*undue hardship*' [58].
15. In summary I am satisfied that the Judge did not err in his approach to the evidence or the application of the country guidance in MS and that he made a decision which was open to him on all of the evidence before him.

Conclusion:

The decision of the First-tier Tribunal did not involve the making of an error on a point of law.

Signed

Date: 15 October 2014

A Grimes
Deputy Judge of the Upper Tribunal