Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/06783/2013

THE IMMIGRATION ACTS

Heard at North Shields	**Determination Promulgated**
on 5th December 2013	**On 27th January 2014**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

REHAB ADEL ALY KOTOB
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Collins instructed by Gulbenkiabn Andonian Solicitors
For the Respondent: Mr McVeety – Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Birkby who, in a determination promulgated on the 28th August 2013, dismissed the appeal on all grounds against the direction for the Appellants removal to Egypt which accompanied the refusal of her claim for asylum or for permission to remain in the UK on any other basis.

2. Permission to appeal was granted on 1st October 2013 and the matter comes before me for the purposes of a hearing to establish whether Judge Birkby has made a legal error material to the decision to dismiss the appeal.

Discussion

3. The Appellant was born on the 1st April 1972 and is a citizen of Egypt. Her three children are dependants on her claim. Mr Collins relied upon the grounds on which permission to appeal was sought supplemented by additional submissions.

4. Paragraph 4 of the grounds alleges the Judge took an overly forensic approach the evidence and erred in overlooking or not adequately considering the evidence which supported the claim.

5. In relation to the obligation to evaluate the evidence in asylum and human rights appeals, in Karanakaran v SSHD [2000] Imm AR 282 (approved in R (Sivakumar) v Tribunal HL) the Court of Appeal said that decision makers, on the classic principles of public law, are required to take everything material into account in asylum appeals. Their sources of information will frequently go well beyond the testimony of the applicant and include in-country reports, expert testimony and - sometimes - specialist knowledge of their own (which must of course be disclosed). No probabilistic cut off operates here: everything capable of having a bearing has to be given the weight, great or little, due to it. What the decision makers ultimately make of the material is a matter for their own conscientious judgment, so long as the procedure by which they approach and entertain it is lawful and fair and provided their decision logically addresses the Convention issues. Finally and importantly the Convention issues from first to last are evaluative, not factual. The facts, so far as they can be established, are signposts on the road to a conclusion on the issues: they are not themselves conclusions.

6. Judges are often criticised in permission applications for not having applied the most “anxious scrutiny” to the evidence but such a charge is not made out in this case. The Judge refers in paragraph 13 to the documentary and oral evidence. At paragraph 32 the Judge confirms that he has carefully considered the oral evidence from the Appellant and her brother in the context of the background situation in Egypt and the submissions made. It was only after having done so that the findings made in relation to the core of the claim are set out in paragraph 33. I do not find it proved this is a case in which a Judge has included standard paragraphs claiming the evidence was considered, when in fact it was not with the required degree of care, as a reading of the determination shows the findings made are in accordance with the evidence. Both the SEF interview and other material was provided and although not specifically stated, it must be

the case that the Judge did not find that any consistency in the Appellants evidence or its content was sufficient to enable him to find in her favour, when considering all the evidence in the round.

7. The weight to be given to the evidence was a matter for the Judge provided he considered the evidence with the appropriate degree of anxious scrutiny, which I find he did, and gave adequate reasons for the findings made, which a reading of the determination again demonstrates he did. It may be that others may disagree with such findings or be of the opinion greater weight should have been given to others issues when considering whether the evidence substantiated the claim, but that is not the correct test to be applied at this stage. As Mr Collins observed neither of the advocates or myself were at the original hearing and so we are guided by the evidence found in the papers and submissions made. As I have found the evidence was considered with the required degree of care the only possible challenge remaining must be based upon an assertion that such findings made on the evidence are perverse or irrational. In R and Others v SSHD [2005] EWCA Civ 982 Lord Justice Brooke noted that perversity represented a very high hurdle. It embraced decisions which were irrational or unreasonable in the Wednesbury sense. I find irrationality is suggestive of a decision in which the reasons lack sense and are without foundation. It has not been shown that such a test is arguably met on the facts of this case. The burden is upon the Appellant to prove she is entitled to succeed and on the basis of the information made available to the Respondent and First-tier Tribunal this element of challenge is not made out. The findings made, for the reasons stated, are within the range of those the Judge was entitled to make on the evidence.

8. The grounds contain a number of similar challenges alleging a ‘nit picking’ approach to the findings by reference to paragraph 32 (iv) and (v) but again there is no merit in the same in terms of proving material error. Disagreement, without more, of the findings made does not establish legal error and not is therefore sufficient to allow me to find that too high a burden of proof has been applied to the case, as clearly it has not.

9. The grounds also challenge the Judges assessment of the evidence of the Appellant’s brother which is said to have corroborated her evidence. The Judge found the Appellant to lack credibility and her evidence to be “at times implausible, evasive, vague and inconsistent.” Examples are provided in paragraph 32 (i) to (ix). In relation to the evidence of the brother the Judge states at paragraph 33 “I do not accept the essentially hearsay evidence of her brother who largely was repeating what he had been told”. The Appellants brother has been in the UK for some time and a serving prison officer since 2006. He does not live in Egypt and has no personal knowledge

of what has or has not happened there. As a result the finding such evidence is hearsay is arguably correct.

10. In relation to hearsay evidence in the Tribunal, the general rule is set out in R (Ullah) v SSHD (CIS 4/12/03) in which the Court of Appeal said that the Secretary of State could not be precluded from advancing his case on the basis of an interview note between an immigration officer and a witness simply because the witness was not called and there was no witness statement. It was evidence, albeit hearsay in form, to which the judge was entitled to have regard. The weight to be attached to it was, however, a different matter. In this case Judge Birkby did not feel able to give the brother's evidence the weight I am being invited to find he should, but that was a matter for the Judge who gave adequate reason for findings as he did.

11. The grounds also challenge the findings made in relation to the newspaper. I have seen the original in the file and this evidence was clearly considered by the Judge as there is reference to it in paragraph 32 (vi) of the determination. The newspaper contains a photograph of a person said to be the Appellant's husband together with a missing persons report. The Judge noted that the newspaper is dated 23rd July 2013 and refers to the Appellant's husband being abducted on 4th June 2013 after the Appellant had left for the UK. The report was also placed after the Respondent had issued the reasons for refusal letter of 4th July 2013. It is noted by the Judge that the Appellant was unable to provide an explanation for why the report was not placed until 23rd July 2013. Mr Collins challenges this conclusion but his argument is, in effect, a disagreement with the findings made. I accept that the newspaper has not been found to be forgery and may be a reputable source of news in Egypt but a genuine document may have content that can be found not to be so, provided sufficient evidence exists to support such a finding. The evidence considered as a whole was the basis on which the Judge found as he did in relation to this aspect of the evidence. It was not found to be determinative either way but part of the overall assessment of the evidence that led to the adverse credibility finding. It is important to draw a distinction between (i) the evidential weight to be attached to a document, which is couched in terms of the document's reliability; and (ii) the question of whether the document is a forgery. Where a claimant seeks to rely on a document then, in the normal course, the burden lies on the claimant to show that it is a document that can be relied on. It does not follow, however, from this exercise that the document is a forgery. There will need to be strong evidence before a Judge makes a positive finding that a document is forged. It is one thing to decide that, as a piece of evidence, a document merits no real weight and is unreliable; quite another to decide that it is a forgery. The fact that a document produced by an appellant merits no weight in evidential terms does not necessarily taint the rest of the appellant's evidence. It simply means that, as a piece of evidence, the document adds nothing either

way. In contrast, a finding that an appellant has actually submitted a forged document may seriously taint the general credibility of the appeal. In Tanveer Ahmed (Starred) [2002] UKIAT 00439 the Tribunal acknowledged the argument that "documents and the information contained in them may be either genuine or false; documents may be genuine but the information itself may be false; documents may not be genuine but the information may nonetheless be true". The Tribunal concluded by stating that "The decision maker should consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round". A reading of Judge Birkby's determination supports the submission this is what he did and so no legal error is proved.

12. No legal error material to the decision to dismiss the appeal on all grounds is proved.

Decision

13. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

14. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I have not been asked to make that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008). No basis for doing so is established on the facts.

Signed.....
Upper Tribunal Judge Hanson

Dated the 27th January 2014