



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

Appeal Number: AA/01054/2015

THE IMMIGRATION ACTS

Heard at Newport

On 7 December 2015

**Decision & Reasons
Promulgated**

On 22 December 2015

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

WM

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Hoshi instructed by Migrant Legal Project

For the Respondent: Mr I Richards, Home Office Presenting Officer

REMITTAL AND REASONS

1. I make an anonymity order under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended) in the light of the matters raised by the appellant in claiming asylum. This order prohibits the disclosure directly or indirectly (including by the parties) of the identity of the appellant. Any disclosure in breach of this order may amount to a

contempt of court. This order shall remain in force unless revoked or varied by a Tribunal or Court.

2. The appellant is a citizen of Egypt who was born on 11 April 1979. His wife and two children are dependants in this appeal. The appellant and his family came to the UK on 10 March 2012 and claimed asylum the next day. They claimed to be at risk on return to Egypt as Coptic Christians.
3. On 6 January 2015, the respondent refused the appellant's claim for asylum and those of his family as his dependants. On 8 January 2015, the Secretary of State made a decision to refuse the appellant leave to enter and proposed to remove him to Egypt. The appellant appealed to the First-tier Tribunal.
4. Following a hearing, in a decision dated 10 June 2015, Judge Davidge dismissed the appellant's appeal. The judge accepted that the appellant and his family were Coptic Christians (see para 15). Further, the judge accepted the appellant's account that his shop had been subject to attack by an unidentified Islamist in order to stop him displaying items which were not in accordance with the Islamic faith. However, the judge did not accept that the appellant's house had subsequently been raided or that he and his family had lived, effectively in hiding, in Cairo for almost a year following these events. On the basis of these findings, the judge did not accept that the appellant would be at risk on return.
5. The appellant appealed to the Upper Tribunal and, having initially failed to obtain permission to appeal from the First-tier Tribunal, on 27 August 2015 the Upper Tribunal (UTJ Gill) granted the appellant permission to appeal.
6. A central ground of the appellant's appeal to the Upper Tribunal was that in para 18 of her determination the judge had counted against the appellant that his wife had not given evidence. The judge concluded that that undermined the appellant's claim in relation to the attack on their home (where she was present) and that they had lived in Cairo subsequently.
7. On behalf of the appellant, his then Counsel (Mr David Neale) submitted a witness statement to the Upper Tribunal in which he stated that he had canvassed with the judge the possibility of adjourning the case part-heard in order to call the appellant's wife as a witness when it became clear that her absence was being relied upon in order to draw adverse inferences. Although Mr Neale did not make a formal application to adjourn the hearing or take instructions from the appellant, that was because the judge indicated that she would not be willing to adjourn the appeal part-heard.
8. At the outset of the hearing, Mr Richards who represented the Secretary of State, indicated that in the light of Mr Neale's statement the Secretary of State did not oppose the appellant's appeal to the Upper Tribunal. He accepted that the judge's reasoning in para 18 of her determination amounted to a material error of law and her decision could not stand.

Decision and Disposal

9. On the basis of that concession, with which I agree, the decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law and the decision must be set aside. Both representatives accepted that the appeal should be remitted to the First-tier Tribunal.
10. Mr Hoshi invited me to preserve the judge's findings in the appellant's favour that he is a Coptic Christian (para 15) and the judge's finding that she accepted the evidence concerning the attack upon the appellant's shop (para 16). Mr Hoshi submitted that the First-tier Tribunal's reconsideration of the appeal should be to make relevant factual findings in respect of the appellant's claim that his house had been raided and what had happened to him and his family in Cairo together with consequential findings in relation to the objective risk to the appellant on return, sufficiency of protection and internal relocation.
11. Mr Richards did not seek to argue to the contrary.
12. I accept Mr Hoshi's submission that the accepted error of law does not taint the judge's factual findings in favour of the appellant that he and his family are Coptic Christians and in respect of his account of the attack upon his shop. Consequently, those factual findings are preserved.
13. The appeal is remitted to the First-tier Tribunal to be heard by a judge other than Judge Davidge to make appropriate findings and re-make the decision in accordance with this decision.

Signed

A Grubb
Judge of the Upper Tribunal