



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

Appeal Number: AA/08190/2014

THE IMMIGRATION ACTS

**Heard at The Royal Courts of
Justice, Belfast
On 19 October 2015**

**Decision & Reasons Promulgated
On 28 October 2015**

Before

The President, The Hon. Mr Justice McCloskey

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MAHMOUD SALAMAN SHTEWI SWELAM

Respondent

Representation:

Appellant: Mr P Duffy, Senior Home Office presenting Officer
Respondent: Ms K Lincoln, of MSM Solicitors

DECISION AND REASONS

1. This appeal has its origins in the decision made on behalf of the Secretary of State for the Home Department (the "*Secretary of State*") dated 02 October 2014, whereby the Respondent's application for asylum was refused. His ensuing appeal to the First-tier Tribunal (the "*FtT*") was allowed. Permission to appeal to this Tribunal has been granted in the following terms:

“[There is] ... an arguable error of law in that the Judge has not made clear findings. The Respondent is entitled to know exactly why the Judge found the Appellant’s account to be credible ...

The Judge has found that the Appellant’s failure to recollect detail does not materially undermine his story. There is a paucity of reasoning in this decision to explain what allowances the Judge has made for the Appellant’s failure to recollect detail ... **[There are]** inadequate findings of fact.”

There is no Rule 24 Notice on behalf of the Respondent.

2. The Appellant is a national of Egypt, aged 39 years. He was the beneficiary of a family visit visa spanning the period December 2013 to June 2014. He made his asylum application on 04 April 2014. In the refusal letter his claim is formulated in these terms:

“Your claim for asylum is based on your fear that if you are returned to Egypt you will be killed by the police, army and the government because of your political opinion because you voted for the Muslim Brotherhood.”

The Respondent claimed that during a period of some years he had been considered by the Egyptian security forces to be an enemy of the state on account of his Muslim religion. He alleged several instances of arbitrary detention and torture, each of several days duration and one lasting for 40 days. He suggested that he was identifiable as a Muslim by his beard. He further claimed to be a supporter of the Muslim Brotherhood. The consistent theme of his questioning when detained was his religion and his political beliefs. Finally, he claimed to have been arrested and detained for 24 hours at Cairo Airport on the occasion of his departure for the United Kingdom.

3. In brief compass, the refusal decision is based upon an analysis of the various claims and assertions made by the Respondent when interviewed and a resulting catalogue of discrepancies, giving rise to the conclusion that his story was not worthy of belief.
4. The decision of the FtT, focusing on the Secretary of State’s assessment of the Respondent as an unreliable and unbelievable historian, contains the following passage:

“The Appellant deals with these matters in his examination in chief and under cross-examination. He has also provided statements which go some way to explaining the difficulty that arises in recalling these events. It is clear on today’s evidence that he has not been consistent or able to give full and detailed answers to every question posed of him.”

This is followed by:

“I am satisfied on the evidence before me today that he could not be expected to give such detailed and accurate answers to every question, given the time scale over which these events occurred. I find that his failure to recollect detail does not materially undermine his story. The Appellant need only satisfy me to the lower standard ...

When I take all of the evidence including the explanations in the round, I am satisfied that the Appellant has met the relevant standard of proof in providing the history”

Next, the Judge summarises the decision maker’s scepticism of the Respondent’s tale, making no specific findings in respect of the factors highlighted: see [18]. At [19] he accepts the Respondent’s explanation that he returned to his home area from Cairo because:

“... this is the area in which he lives and he had other reasons for returning there.”

The only other issue addressed by the Judge is the background, objective evidence. This, he finds, establishes that the area of the Respondent’s residence –

“... is one of turmoil and high tension. Many people are stopped, questioned and some are arrested and detained for periods of time. I accept that the Appellant was one of these people who were stopped regularly, detained and subjected to inhuman and degrading treatment on some occasions ...

I find that the Appellant’s claim fits well into the context of the background material. The account is inherently plausible and, in spite of probing and robust cross examination, no material inconsistencies emerged.”

The Judge then repeats his evaluation of the Respondent as a credible historian and his acceptance of his account in full. This was followed by a conclusion that he had been persecuted on the grounds of his political opinions and religious beliefs. The appeal was allowed under the Refugee Convention, Articles 2 and 3 ECHR and the humanitarian protection provisions of the Immigration Rules.

DECISION

5. It is axiomatic that the decision of every Tribunal contain all necessary findings, complimented by sufficient reasons. See MK (Duty to Give Reasons) Pakistan [2013] UKUT 641 (IAC) and, in particular [11]:

“The depth and extent of the duty to give reasons will inevitably vary from one case to another. The duty is contextually sensitive.”

In the same passage, it is noted that in Shizad [2013] UKUT 35 (IAC), the Upper Tribunal observed that reasons need not be extensive if the decision makes sense as a whole. I also draw attention to, without repeating, [12] of the decision in MK.

6. The determination of appeals of this nature requires an evaluative judgment on the part of the Upper Tribunal, standing back and examining the first instance decision as a whole and in the round. In the performance of such an exercise it is essential to identify the central issues. To reflect the repeated exhortation by appellate courts that minute, forensic dissection of first instance judgments is not appropriate and, further, that rehearsal of all the evidence and findings on every contentious issue is not required, a certain latitude must be accorded to the trial judge. In the

particular context of this appeal, two considerations stand out. First, it was not incumbent upon the FtT to resolve conflicts between the evidence of the Appellant and that of other witnesses: this did not arise. Second, in circumstances where the fundamental question was whether the Appellant was believable, the Judge had the benefit and advantage of assessing his demeanour and, as highlighted in the decision, his performance under cross examination.

7. Approached in this way, I find no merit in the Secretary of State's appeal. The FtT's decision suffices to convey to the parties why the Appellant succeeded and the Secretary of State failed and, overall, it makes coherent sense. I dismiss the appeal and affirm the decision of the FtT.

Bernard McCloskey

THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 19 October 2015