



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

Appeal Number: PA/13682/2016

**THE IMMIGRATION ACTS**

**Heard at Bennett House, Stoke  
On 23<sup>rd</sup> May 2017**

**Decision & Reasons Promulgated  
On 02 June 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**MAHMOUD SAID AHMED MOHAMED IBRAHIM  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr J Howard of Fountain Solicitors

For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellant appeals against the decision of Judge Raikes of the First-tier Tribunal (the FtT) promulgated on 23<sup>rd</sup> January 2017.
2. The Appellant is a male Egyptian citizen who arrived in the United Kingdom on 27<sup>th</sup> July 2010 as a visitor. He remained in the United

Kingdom when his visa expired. On 13<sup>th</sup> June 2016 the Appellant was arrested for harassment of a former girlfriend. Following his arrest he claimed asylum. His claim was made on the basis that he had a well-founded fear of persecution in Egypt because he had married a woman without her family's consent, and the family had threatened to kill him.

3. The Respondent refused the Appellant's application on 30<sup>th</sup> November 2016. The Appellant appealed and the hearing of his appeal took place on 10<sup>th</sup> January 2017 at Stoke-on-Trent.
4. The Appellant did not attend. There was no explanation for his non-attendance and his representative advised the FtT that efforts had been made to contact him by telephone without success.
5. The Appellant's representative applied for an adjournment to enable the Appellant to attend a hearing at a later date. The FtT was satisfied that the Appellant had been given proper notice of the hearing and noted the failure to attend without explanation. The FtT refused the adjournment request and proceeded to hear the appeal in the Appellant's absence. The Appellant's representative thereafter took no further part in the proceedings.
6. The FtT considered the documentary evidence submitted on the Appellant's behalf and did not find him to be credible. The FtT found that the Appellant would not be at risk if returned to Egypt and therefore the appeal was dismissed with reference to asylum, humanitarian protection, and on human rights grounds. The FtT did not accept that the Appellant's removal from the United Kingdom would breach Article 8, as his removal would not represent a disproportionate breach of his family and private life.
7. The Appellant applied for permission to appeal contending that there had been a mistake as to a material fact which could be established by objective and uncontentious evidence, where the Appellant and/or his advisors were not responsible for the mistake, and where unfairness resulted from the fact that a mistake was made.
8. It was submitted that the Appellant had been arrested and detained by police in Derby on the evening of 9<sup>th</sup> January 2017. He was only released on the morning of 10<sup>th</sup> January 2017 between 6 and 7am, and therefore could not attend his hearing on the morning of 10<sup>th</sup> January 2017.
9. It was contended that the FtT could not be blamed for proceeding in the Appellant's absence, as the Appellant had not given a reason for his non-attendance. However fairness would dictate that the Appellant should be given a proper opportunity to place his case before the FtT through giving oral evidence to rebut the refusal letter, and establish his credibility. Reliance was placed upon MM (Sudan) [2014] UKUT 105 (IAC). It was submitted that relevant evidence had not been considered by the FtT, that being the Appellant's oral evidence, and this had resulted in unfairness.

10. It was submitted that the Appellant's failure to attend the FtT to give evidence was the result of external circumstances outside his control
11. Permission to appeal was granted by Judge Kimnell of the FtT who found;

"There may have been procedural unfairness by proceeding to hear the appeal in the Appellant's absence since, whilst it was unknown to the judge at the time, the Appellant was prevented from attending because he was in police custody until the morning of the hearing.

One might have thought the Appellant or his representatives would have informed the Tribunal before promulgation took place, thus giving the opportunity to restore the matter to the list, but that does not appear to have been done."
12. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 contending that the FtT directed itself appropriately. The Appellant had not explained why, having been released between 6 and 7am he did not contact the Tribunal or his representatives. The FtT found against the Appellant in relation to credibility, but also considered the Appellant's claim in the alternative at paragraphs 29 30, and in view of this, there was no material error disclosed by the FtT proceeding in the Appellant's absence. The FtT had considered the Appellant's claim at its highest, and had regard to sufficiency of protection, internal relocation and the relevant background evidence. The grounds did not seek to challenge the FtT analysis of these issues.
13. Directions were issued making provision for there to be a hearing before the Upper Tribunal to decide whether the FtT decision contained an error of law such that it should be set aside.

### **The Upper Tribunal Hearing**

14. The Appellant did not attend. There was no explanation for his non-attendance, but Mr Howard indicated that he was content to proceed to deal with error of law in the Appellant's absence. He was not seeking an adjournment, and in those circumstances, I was satisfied both that the Appellant had been given proper notice of the hearing date, and that it was appropriate and in the interests of justice to proceed and hear submissions in relation to error of law, for which the Appellant's attendance was not necessary.
15. Mr Howard relied upon the grounds contained within the application for permission to appeal. I was asked to accept that the Appellant had now explained why he did not attend the FtT hearing, and in the circumstances, it would be unfair not to allow the Appellant an opportunity to give oral evidence.
16. Mr Bates submitted that the FtT had not materially erred in law, and relied upon the rule 24 response.

17. Mr Bates submitted that the Appellant had had sufficient time to attend the hearing. Mr Bates pointed out that the Appellant was in police custody in Derby, which is where he lived. Therefore he would have been travelling from Derby to Stoke for the hearing in any event, and the journey time between Derby and Stoke by train was approximately one hour.
18. Also Mr Bates submitted that the FtT had considered the Appellant's case at its highest and found that there was a sufficiency of protection and a reasonable option of internal relocation available. There had been no challenge to those findings in the grounds seeking permission to appeal.
19. The FtT had taken into account the documentary evidence provided on the Appellant's behalf and there was no indication that the Appellant's oral evidence would have been any different to that contained within the documentary evidence.
20. In response Mr Howard pointed out that at paragraphs 29 and 30 in which the FtT had considered sufficiency of protection and internal relocation, the FtT had made a finding that the Appellant's claim that he could not internally relocate was not credible. Therefore, the FtT findings were based on credibility, and may have been different if the Appellant had been given the opportunity to give oral evidence.
21. At the conclusion of oral submissions I reserved my decision.

### **My Conclusions and Reasons**

22. I have to decide whether the FtT has erred in law so that the hearing was unfair. MM makes it clear that an error of law may be found in circumstances where some material evidence, through no fault of the FtT was not considered, which resulted in unfairness.
23. I find no material error of law was made by the FtT in this case, for the following reasons.
24. I do not accept that the Appellant's failure to attend the FtT hearing was as a result of external circumstances outside his control. He could have attended if he wished. The Appellant has produced no evidence from the police to confirm exactly what time he was released. I accept that he was in custody at Derby Police Station overnight on 9<sup>th</sup> January 2017. I accept his statement dated 6<sup>th</sup> February 2017 that he was released without charge between 6 and 7am on the morning of 10<sup>th</sup> January 2017.
25. The police station was in Derby, and the Appellant lives in Derby. He presumably would have made arrangements to travel from Derby to Stoke on the morning of 10<sup>th</sup> January 2017, so that he could arrive at the FtT in time for his hearing at 10am. No adequate or satisfactory explanation has been given as to why the Appellant could not maintain those travel arrangements. If one consults the train timetables, it is evident that trains between Derby and Stoke take approximately 50 minutes. It is unlikely

that the Appellant would have planned to leave Derby before 7am on the morning of 10<sup>th</sup> January 2017.

26. There is no evidence to indicate that the Appellant was unwell as a result of his detention at the police station. He has not provided evidence to indicate that he was in any way unfit to travel. No evidence has been given to indicate that he would have been unfit to give evidence.
27. The Appellant has not adequately explained why he did not contact either his solicitors or the FtT hearing centre if he was having any difficulty in travelling from Derby to Stoke. The FtT hearing did not commence until 12.40pm.
28. It is therefore not the case that the Appellant was prevented by external forces from attending the Tribunal hearing. He did not attend because he chose not to.
29. The FtT, in my view, was clearly correct to proceed with the hearing in the absence of any explanation for the Appellant's non-attendance. I do not find that unfairness has resulted from proceeding in his absence.
30. The FtT took into account the documentary evidence submitted on the Appellant's behalf, including a skeleton argument, and the Appellant's witness statement dated 3<sup>rd</sup> January 2017, commenting upon the Respondent's reasons for refusing his application.
31. I find that the FtT gave cogent reasons for finding the Appellant's claim to be incredible.
32. However, the FtT went on to consider objective evidence in relation to sufficiency of protection in Egypt, and the option of reasonable internal relocation. Although at paragraph 29 the FtT did make reference to the Appellant's claim that he could not internally relocate being incredible, the FtT nevertheless considered the objective position.
33. There has been no challenge to the findings made that the Appellant had not proved that there would no sufficiency of protection or reasonable internal relocation option available, if such was needed.
34. The FtT comprehensively considered the Appellant's appeal, and gave adequate and sustainable reasons for findings. No unfairness has resulted from the Appellant's failure to attend.

### **Notice of Decision**

The FtT did not materially err in law. The FtT decision stands and the Appellant's appeal is dismissed.

**Anonymity**

No anonymity direction was made by the FtT. There has been request to the Upper Tribunal for anonymity. I do not see a need to make an anonymity order

Signed

Date: 26<sup>th</sup> May 2017

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT  
FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed

Date: 26<sup>th</sup> May 2017

Deputy Upper Tribunal Judge M A Hall