



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

Appeal Number: PA/06907/2017

THE IMMIGRATION ACTS

**Heard at Manchester Civil Justice Decision & Reasons Promulgated
Centre**

On 24 September 2018

On 03 October 2018

Before

UPPER TRIBUNAL JUDGE LANE

Between

**ALI THABET
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs Barton, instructed by Crome Legal Services

For the Respondent: Mr Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant Ali Thabet, was born on 15 November 1986 and is a male citizen of Egypt. He arrived clandestinely in the United Kingdom in June 2015. At his screening interview in June 2015 he claimed to be a Palestinian. However, he subsequently made an asylum claim as an Egyptian citizen in January 2017. His claim was refused by a decision dated 7 July 2017. He appealed to the First-tier Tribunal (Judge Bell) which, in a decision which was promulgated on 3 January 2018, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. There were five grounds of appeal. At the hearing before the Upper Tribunal at Manchester Mrs Barton, who appeared for the appellant, dealt primarily in her submissions with Ground 4 which reads as follows:

Finally, Judge Bell was biased and racially motivated in her conduct of the hearing and that the treatment that she meted out to our representative who happened to be of a different race and colour to her was overbearing while forcing her not to finish a single sentence in presenting her client's case in the full glare of all present. This led the representative to break down in the middle of the hearing for which the judge had to call for a fifteen minute break. Please see enclosed copy of our representative's notes on the day of hearing and had the potential of changing the outcome of the appeal. For fairness and justice the judge should be sound enough to show no bias or preference for certain person or show the same for someone not of her colour. This was clearly the case. She racist towards our representative (*sic*).

3. Resident Upper Tribunal Judge O'Connor invited Judge Bell to comment on the grounds seeking permission. Judge Bell's response is the subject of a memorandum and directions prepared by Resident Judge O'Connor which has been served on both parties. Unfortunately, Judge O'Connor's direction that the Secretary of State file a legible copy of the Presenting Officer's record of the hearing has not been complied with. However, neither representative before the Upper Tribunal suggested that the appeal need be delayed for that document to be produced.
4. Having heard the initial representations for both parties, I found in the court file a typed document which appears to be Judge Bell's contemporaneous Record of Proceedings. During the brief adjournment, I provided a copy of this document to both representatives, who had not previously seen it. When the hearing reconvened, I asked both representatives to give me their submissions in respect of the document. I then reserved my decision.
5. There appears to be some dispute as to the facts. First, both the appellant's representative before the First-tier Tribunal (Ms M Amadi) and Judge Bell cannot agree as to who appeared late for the Tribunal hearing. I do not consider it necessary to determine that issue since it is clear that the judge (although she records that Ms Amadi appeared late at court - 10.30 - on account of train delays) she did not criticise Amadi and she did not allow any irritation she may have felt to influence her decision; having recorded the late arrival, the record moves on immediately to record the opening of the appeal.
6. In her response, Judge Bell gives two reasons why she intervened in the hearing, the first being that the case had been poorly prepared. I am entirely sure that both Ms Amadi (who has not provided her own detailed account of what happened at the hearing) and the have sought to give a true and accurate account of what each believed occurred at the hearing. However, the fact remains that I have the more detailed and, importantly, contemporaneous evidence from Judge Bell in the form of her record of proceedings. I find that I should attach weight to those notes because

they were prepared at the time of the hearing itself. The notes also support the subsequent account of the hearing given by Judge Bell in her response to Judge O'Connor. The only account of the hearing which has emerged from the appellant's representatives is in the form of the grounds of appeal (see above).

7. There appears to have been a problem with documents at the outset of the hearing and which the judge has subsequently characterised as poor preparation. I note that the contemporaneous notes record that

[Ms Amadi] does not appear very familiar at all with the court documents submitted, is not able to say what they are or how the originals relate to the translations – conclude no point in pursuing this matter – I will have to do the best I can.

Notwithstanding the judge's concern regarding the preparation of the case, there was nothing in the contemporaneous record which indicates that any irritation which the judge may have felt has influenced her conduct of the proceedings.

8. A little later in the record the judge asks of Ms Amadi: "Can you not ask [the appellant] about those documents so that I can be clear about what they are and how he got them?" Ms Amadi replied "It's my right to ask what I want or not and then the PO will ask questions and I will respond". After that exchange, the judge records "[Ms Amadi] quite disrespectful and seems angry". My reading of these notes indicates that whilst the judge had reason for some concern at the standard of preparation rather of the case and the attitude of Ms Amadi, she has remained calm. More importantly, I am satisfied that the contemporaneous record indicates that the judge was not expressing any discontent with Ms Amadi or her conduct of the proceedings but was rather attempting (as she confirms in her response) to clarify the evidence to enable her to reach a fair and just determination of the appeal.
9. The hearing proceeded and I note the judge did make a number of interventions but I am satisfied that these were made to clarify some of the questions being put by Ms Amadi. Several times the judge records that the interpreter looked puzzled. The judge was right to be concerned if the interpreter could not understand the questions which he was being asked to translate before the appellant. The appellant's own case would not have been assisted by any breakdown in communication involving the interpreter.
10. A little later in the record, Ms Amadi says, "I've lost confidence because you interrupted me. Maybe it's because English is not my first language. I've been to court many times". The judge records that Ms Amadi was "getting agitated – ... raising her voice to me". The judge then says, "I think it would be a good idea to take a break now". There was then a brief adjournment of fifteen minutes after which the judge records Ms Amadi as "seems fine now".

11. At the end of the record there is no account of the Presenting Officer's submissions but there is a lengthy record of Ms Amadi's submissions to the Tribunal which take up most of an A4 sheet. There was no suggestion at all from the record of proceedings that the judge prevented Ms Amadi from presenting her client's case at length at the end of the hearing.
12. It is vitally important that justice is done but also that it is perceived to be done both by the parties to the litigation but also by any rational observer of the proceedings I find no evidence to support the allegations in the grounds of appeal of racism and hostility on the part of Judge Bell. I accept that Ms Amadi became upset but I can identify nothing that Judge Bell said to her in the course of the hearing which might justify the allegation of racism. I find that Ms Amadi became frustrated when the judge intervened to clarify the evidence and questions put to the appellant which Ms Amadi herself may well have considered to be perfectly clear and cogent. I do not find that the judge criticised Ms Amadi for the fact that English is not the first language. Ms Amadi should be aware that it was the duty of the judge to the appellant to ensure that she understood all the evidence. To that end, her interventions were reasonable and necessary. In the circumstances, I reject the submission that Judge Bell behaved improperly or unfairly during the course of the First-tier Tribunal hearing either as alleged in the grounds of appeal or at all.
13. The remaining grounds may be dealt with briefly. Those grounds were considered in detail by Judge Hodgkinson in his refusal of permission in the First-tier Tribunal which is dated 5 February 2018. The grant of permission in the Upper Tribunal by Judge Rintoul describes the other grounds as having "significantly less merit" and deals only with Ground 4. In my opinion, the remaining grounds amount to nothing more than a disagreement with findings which were patently available to the judge on the evidence. The judge did not find the appellant to be a credible witness and she has given clear and cogent reasons for reaching that conclusion. Ground 5 addresses Article 8 ECHR. It is asserted that the judge's analysis was "clearly biased". Nothing is provided to support that very serious allegation. Section 55 of the Borders, Citizenship and Immigration Act 2009 is referred to but I note that there are no children of the relationship between the appellant and his British partner, Ms Armstrong. Further, I note that the appellant and Ms Armstrong do not cohabit and the judge has made a clear finding that the relationship was "at the present time, [not] capable of engaging Article 8". The judge's findings in respect of Article 8 are manifestly sound and no error of law has been disclosed.

Notice of Decision

This appeal is dismissed.

No anonymity direction is made.

Signed

Date 27 September 2018

Upper Tribunal Judge Lane

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 27 SEPTEMBER 2018

Upper Tribunal Judge Lane