



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

Appeal Number: PA/08264/2017

THE IMMIGRATION ACTS

**Heard at Newport
On 22 August 2018**

**Decision & Reasons
Promulgated
On 26 September 2018**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

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(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr Bates, Senior Home Office Presenting Officer

For the Respondent: Ms Patyna instructed by Migrant Legal Partnership, Cardiff

DECISION AND REASONS

1. The Secretary of State appeals with permission against a decision of First-tier Tribunal Judge I D Boyes promulgated on 20 September 2017, allowing Mr Neanaa's appeal against a decision made on 30 August 2017 to refuse his protection and human rights claim, the Secretary of State having made a decision to deport him under Section 5(1) of the Immigration Act 1971 as his presence in the United Kingdom was not conducive to the public good.
2. The appellant's case is that he has taken part in demonstrations against the ruling party and the president in Egypt and had made numerous

Facebook postings but later deleted those on advice of his brothers. In summary, his case is that he has been sentenced to a term of imprisonment in his absence and a fine had been imposed on him on the basis that he was a member of the Muslim Brotherhood. The appellant's case is that he is not a member but that the family of his late partner, F, had manufactured the claims in order to have him punished by the authorities.

3. The Secretary of State's case is that the respondent simply cannot be believed. It was noted that he had:-

- (i) entered the United Kingdom on 16 April 2010 clandestinely, claiming to be a Palestinian national, it being discovered through fingerprint analysis that he had previously been fingerprinted in Greece and Germany;
- (ii) absconded prior to his transfer to Greece after his asylum claim had been refused on 5 August 2010 pursuant to the Dublin Regulations;
- (iii) failed to attend a substantive asylum interview on 25 October 2010;
- (iv) been convicted at Southwark Crown Court on 28 January 2016 of exposure and possessing an identity document – a Belgian identity card – with intent, resulting in a total of fourteen months' imprisonment;
- (v) failed to respond to the decision to deport notice served on 16 February 2016 resulting in a deportation order signed on 4 April 2016;
- (vi) he signed a disclaimer on 19 April 2016 saying he wished to return to Egypt under the Facilitated Returns Scheme but on 26 May 2016 made an asylum claim on the basis that his return to Egypt would be contrary to the Refugee Convention and the European Convention on Human Rights.

4. The Secretary of State also drew inferences adverse to the respondent from his failure to claim asylum in his current identity until after his conviction and being served with a deportation decision (26 May 2016), having failed to explain this adequately; and, that despite numerous opportunities to raise his claim of a fear of return, he had waited until the last possible minute and in light of his initial claim of asylum assuming the identity of a Palestinian national. The Secretary of State did not accept either the authenticity of the documents supplied.

5. In addition, the Secretary of State was not satisfied that the respondent had a family life with his partner, Ms T, it not being accepted that the couple were married lawfully or that they were in a genuine and subsisting relationship. It was considered also that he did not meet the private life requirements of the Immigration Rules, nor were there very compelling

circumstances such that his removal would be in breach of the United Kingdom's obligations pursuant to the Human Rights Convention.

6. Judge Boyes concluded [29] that the respondent had succeeded in his claim for asylum, accepting that he would be likely to be persecuted for a perceived membership of the Islamic Brotherhood. The reasons given are as follows:-

"30. I reach this conclusion for the following reasons; I find the version of events given by the appellant as to what happened to himself and Fatima to be truthful and credible. I do not accept the suggestion that the appellant made this up. I so find that the appellant was open, honest and frank when it came to discussing this aspect of his claim and I did not reach the conclusion that the appellant had embellished the version of events or 'gilded the lily'. The detail he gave, I was satisfied, was indicative of the events occurring. I rely upon the objective evidence provided by the appellant that honour killings are not uncommon".

7. In dealing with the contrary factors the judge held as follows:-

"34. I take on board the [respondent's] convictions for a false document offence however that does not mean that automatically every document he provides or purports to rely upon is viewed with a deep sense of suspicion or scepticism. The [respondent's] reasons as to why these documents were not provided sooner is logical and I find it to be the truth. If the respondent sought to believe that the documents were not genuine then further enquiries could have been made. Producing an excerpt from 'Wikipedia' about forged documents is hardly reliable evidence.

35. The [respondent] does not come with clean hands to the Tribunal in seeking this protection but looking at matters in the round I do not hold his criminal convictions against him as so damaging to his credibility that he is incapable of belief. The [respondent's] refusal to accept his convictions and underlying factors are unattractive but not demonstrative of a serial liar. There are many reasons why a person may not accept or may not wish to accept shameful behaviour. That he is untruthful is one such reason but not the sole reason. I have considered Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 but do not hold that the delay of the previous lies against the appellant. He has provided satisfactory reasons for these matters".

8. The judge did not reach any conclusions regarding the Human Rights Convention having concluded that the appellant was entitled to asylum.

9. The Secretary of State sought permission to appeal on the grounds that the judge had erred:-

- (i) in failing to give clear reasons why the respondent's account was accepted despite continuing to deny the offences of which he had been convicted, the submission that the false ID card was only to get into nightclubs having been rejected absurd by the sentencing judge;

- (ii) as, given the use of a false nationality document and absconding and the dismissal of his appeal as well as the lack of corroborative documents, the judge ought to have considered and given clear reasons for accepting credibility;
- (iii) in effectively reversing the burden of proof in suggesting the respondent should make further enquiries, contrary to **Tanveer Ahmed**.
10. On 19 January 2018 First-tier Tribunal Judge Mark Davies granted permission to appeal.
11. In considering the challenge to Judge Boyes' decision, I have borne in mind R (Iran) v SSHD [2005] EWCA Civ 982
12. The Secretary of State's case is both a challenge to the adequacy of reasons and also, in effect, a perversity challenge. The respondent's case, as set out in the rule 24 notice and expanded upon in submissions is that the reasoning is adequate, and the decision comes nowhere near the high threshold to amount to perversity. It is also submitted that if, the Secretary of State were correct on that account, then it would never be possible for an appellant to overcome credibility challenges such as these. I disagree with that point; the case is rather that the evidence in this case was so lacking that it could not have overcome the damage caused to the respondent's credibility.
13. For the reasons set out below, and despite the submissions made by the respondent to the contrary, I consider that Judge Boyes' reasoning in this case was inadequate given the many serious reasons militating against the respondent's credibility. Further, his conclusions with regard to credibility are perverse as properly understood - see R (Iran) at [11]. In reaching these conclusions, I bear in mind there it is a high threshold to be met.
14. There is no indication that Judge Boyes took proper account of the sentencing remarks of the sentencing judge who stated:-
- "I deal first with the offence involving the identity card. I reject any suggestion that you obtained it that very evening in order to use it to gain entry to nightclubs. In the event you no longer persist in that absurd basis of plea.
- ... The Belgian identity card that you had would have given you the chance to take employment in this country and to have freedom within the European Union. So the improper intention which you had in relation to the possession of that document was serious. In relation to the offence of exposure, this involved you in exposing your penis which was erect and masturbating in a crowded street in front of many people including children. This presence in the street is likely to be explained because they were making their way from the New Year's Eve fireworks display on the river. The fact that you were drunk makes the offence more serious".

15. It is of note that the respondent pleaded guilty and in consequence received a reduction of one-third in his sentence. Judge Boyes' treatment of this is inadequate as it fails to deal with the respondent's use of a false identity card and the finding of why he had used it. That he had just used it that evening was roundly rejected by the sentencing judge. It is of note that the respondent, despite dropping the basis of plea in the criminal case, sought to make it again before Judge Boyes who nonetheless gave no proper indication as to why accepted the explanation, or why, if he did not, did not draw an adverse inference as to the respondent's credibility.
16. Judge Boyes' failed also to deal adequately with the use of a false identity to claim asylum, a deception in which the respondent persisted for a significant period. What Judge Boyes did not do adequately is set out the respondent's explanations for matters which inevitably went to his credibility and explain adequately why he accepted them. He does not, for example, set out when he accepts the respondent learned of the threats to him in Egypt, nor does he explain why he considered that the respondent's decision to make a voluntary return to Egypt did not also undermine his credibility.
17. Viewed as a whole, I regret to say that the judge's finding that the respondent was credible as to the core of his claim, when faced with so many serious credibility issues, is wholly inadequate and perverse.
18. For these reasons, I find that the judge's positive credibility findings did involve the making of an error of law and must be set aside. It follows from this that the positive findings with regard to the reliability of the documentary evidence must also fall given they are predicated on the respondent's reliability as a witness.
19. Accordingly, I find that none of the findings of fact made can be sustained and that accordingly, it will be necessary for fresh findings of fact on all relevant issues. It is therefore I consider appropriate to remit the decision to the First-tier Tribunal for it to be heard afresh by a different judge.

Notice of Decision

- (1) The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
- (2) I remit the decision to the First-tier Tribunal for a fresh decision on all issues.
- (3) The appeal must not be heard by Judge Boyes.
- (4) I maintain the anonymity order made by the First-tier Tribunal.

Signed

Date 28 August 2018

A handwritten signature in black ink, appearing to read "James Rintoul". The signature is written in a cursive style with a large initial 'J' and 'R'.

Upper Tribunal Judge Rintoul