



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/13172/2017

THE IMMIGRATION ACTS

Heard at Field House
On Monday 23 July 2018

Determination Promulgated
On Monday 30 July 2018

Before

UPPER TRIBUNAL JUDGE SMITH

Between

R F S

[ANONYMITY DIRECTION MADE]

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The Appellant appeared in person

For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity order was not made by the First-tier Tribunal. However, as this is an appeal on protection grounds, it is appropriate to make that order. Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

Background

1. The Appellant appeals against a decision of First-Tier Tribunal Judge S L Farmer promulgated on 12 January 2018 (“the Decision”) dismissing the Appellant’s appeal against the Secretary of State’s decision dated 27 November 2017 refusing

his protection and human rights claims. The challenge to the Decision which is before me proceeds only on protection grounds. No human rights claim was pursued at the hearing before the First-tier Tribunal.

2. The Appellant is a national of Egypt. He claims to have arrived in the UK clandestinely on 20 October 2015. He claimed asylum on 22 October on the basis that he was Syrian. Having absconded after he was given temporary release, he next came to the attention of the authorities on 1 September 2017 when he was arrested by the police and referred to immigration officials. He then admitted that he is Egyptian and, on 5 September 2017, made a fresh asylum claim based on a fear of return to that country.
3. The Appellant has a brother, [HS], whose asylum appeal was allowed by First-tier Tribunal Judge Borsada by a decision promulgated on 21 February 2017. [HS] was found to be credible in his claim.
4. Judge Farmer found the Appellant's claim not to be credible. She heard evidence also from [HS] but did not accept that his evidence was to be believed either. She therefore dismissed the appeal.
5. I do not need to refer to the grounds of appeal. Those were drafted by the Appellant in person (his former solicitors having ceased to act for him). The grounds are no more than a repetition of the Appellant's claim.
6. I focus instead on the reason why permission to appeal was granted by First-tier Tribunal Judge Bird on 2 February 2018 as follows (so far as relevant):

“..[3] The judge heard evidence from the appellant and his brother whose appeal had been allowed following an oral hearing before a Judge of the First tier Tribunal sitting in Birmingham. This decision was not challenged. The appellant's brother has since been granted refugee status.

[4] He gave evidence at the hearing of the appellant's appeal. It is arguable that in finding the appellant's brother not to be a credible witness, the judge has made an arguable error of law in ruling against the decision of (which was unchallenged by the respondent) the judge of First tier Tribunal (paragraph 28). In this the judge has sought to overrule that finding and this is an arguable error of law.”

7. The matter comes before me to decide whether the Decision contains a material error of law.

Decision and Reasons

8. I can deal very shortly with what is said in the last paragraph of Judge Bird's decision. Judge Farmer has not “sought to overrule” any finding made in [HS]'s appeal. His successful appeal is undisturbed by Judge Farmer's finding. The highest the Appellant can put his case on this issue is that Judge Farmer needed to take account of the fact that another Judge had found [HS] to be a credible witness. That is precisely what the Judge did at [25] of the Decision where she noted that [HS] had been found credible in his own claim and that if she were to reach a

different conclusion, “specifically in relation to the second limb of the appellant’s claim” she “must have a good reason to do so”.

9. In self-directing herself in that way, Judge Farmer had regard to the case of AB (Witness corroboration in asylum appeals) Somalia [2004] UKIAT 00125. As was said in that case, “if A and B concur in their evidence that does not without more prove that they are telling the truth, even under the lower standard of proof”. I accept that this case is not entirely on point because, there, the witness had not been found by another Judge to be credible. However, authority for the proposition that two Judges can lawfully reach a contrary decision on the same facts is also to be found in the Court of Appeal’s judgment in Otshudi v Secretary of State for the Home Department [2004] EWCA Civ 893. The material part of the judgment appears at [11] as follows:

“This is not the class of case which involves what Laws LJ has called a “factual precedent” – for example a finding about the political situation in a given country at a given moment. It is an illustration, if an alarming one, of the fact that two conscientious decision-makers can come to opposite or divergent conclusions on the same evidence. But it is no more material to the legal soundness of the present adjudicator’s decision than hers would be to the soundness of the second adjudicator’s decision...”
10. In Otshudi the dismissed and allowed appeals were the other way around. As such, the Court did not have to grapple with the relevance of earlier positive findings to a later decision. I also take into account what is said at [23] of the judgment about the potential merit of a reconsideration of the unsuccessful appellant’s case. However, that judgment has another point of distinction from the present appeal which concerns the overlap of the two cases. In Otshudi, both brothers claimed asylum based on an identical set of facts arising from one single event in 2002.
11. That then brings me on to the claim of the Appellant and [HS] in this case. The Appellant claims that he is at risk on return, firstly because he was arrested and detained by the authorities following protests in January 2011 which led, he says, to a sentence of twenty-five years. He says he escaped from prison in June 2014 and, having returned to his family home, was told by his mother to leave Egypt. On the Appellant’s account, [HS] had by that time left Egypt in fear of his own life. The second basis of the Appellant’s claim is the position of his father who it is said was suspected of being a terrorist. It is said that he disappeared following attendance at a demonstration in June 2013. The Appellant claims that [HS] was at the demonstration with his father when his father was taken. The Appellant says that he will be suspected of being a terrorist because of the actions imputed to his father.
12. The account of [HS] is consistent with the Appellant’s in relation to [HS]’s own attendance at the 2013 protests and that his father disappeared after the protests. [HS]’s claim is based principally on a risk to himself based on his own attendance at the 2013 protests. [HS] also said (recorded at [IV] of Judge Borsada’s decision) that the Appellant had left Egypt by that time, and that he had not seen the Appellant for five years which is of course inconsistent with the Appellant’s

account that he was taken away after the protests some two years earlier and did not leave Egypt until a year after [HS] because he (the Appellant) was still in prison in 2013.

13. Judge Borsada accepted that both [HS] and his father would be of interest to the authorities because of their attendance at the protests in 2013. As noted at [10] of his decision, the “background material and...the CIG itself states that the government targets members of the Muslim Brotherhood who have taken part in protests against the government which have become violent and this is the evidence that the appellant gave about the demonstration that led directly to the disappearance of his father and the authorities attempt to arrest and detain him”. The Judge went on to find that it remained “unclear to me that the authorities have scaled back their operations against MB sufficiently in order for me to safely reach the safe conclusion that the appellant would no longer be wanted on his return to that country”.
14. I observe that the hearing before Judge Borsada took place on 6 February 2017 and his decision was promulgated on 21 February 2017. The First-tier Tribunal hearing of this appeal was on 11 January 2017 and the Decision was promulgated on 12 January 2018, nearly one year after the determination of [HS]’s appeal. The obligation on a Judge is of course to decide a protection claim based on what the evidence shows as at date of hearing (Ravichandran).
15. I turn then to consider how the Judge approached the relevance of the findings in [HS]’s appeal to that of the Appellant. I have already set out Judge Farmer’s indication that Judge Borsada’s findings should be her starting point and that, if she were to reach a different conclusion, particularly with regard to [HS]’s credibility she needed to show good reason.
16. As regards the first limb of the Appellant’s claim, namely his attendance at the 2011 protests and arrest and detention thereafter, Judge Farmer had already found the Appellant’s claim to lack credibility for the reasons given at [21] to [23] of the Decision. In so doing, as Mr Wilding pointed out, she did not need to have regard to the evidence of [HS] because there is no suggestion that [HS] was with the Appellant at that demonstration and, in fact, [HS]’s account of his brother’s (the Appellant’s) movements at that time undermines the Appellant’s case in this regard (for the reason I give at [12] above).
17. As Judge Farmer recognised at [25] of the Decision, it was in relation to the second limb of the Appellant’s claim that the evidence of [HS] was potentially more significant. The Appellant relies on the authorities’ interest in his father and claims, in effect, that his father’s political beliefs would be imputed to him by the authorities as his son. That then is the background to the Judge’s findings at [28] to [32] of the Decision as follows:

“[28] I then have to consider the second limb of his claim which relates to his fear due to his father’s political activities and in particular being a supporter of the Muslim Brotherhood. FTTJ Borsada found [HS] to be credible and consistent when he gave his evidence despite vigorous cross-examination. I did not find him to be a credible witness. On two important issues I find that his claim lacked credibility.

Firstly I do not accept his account of when he last spoke to his mother, he gave two contradictory dates and given his alleged concern over her safety I do not accept that the brothers would not have discussed their respective contact with their mother. Secondly the account of how the brothers found each other is also inconsistent. The appellant was clear in his evidence that a friend in detention, "[I]" (a name agreed by [HS]) had another friend who was also [HS]'s friend. It was through this avenue that the brothers found each other. We know from their evidence this happened after detention 1 September 2017 but prior to his screening interview on 13 September 2017. However, the friend of [HS], [PM] was apparently unknown to the appellant (according to his oral evidence) and yet [HS]'s evidence was that he was a mutual friend and the appellant knew him too. I find that this is a significant discrepancy as the appellant places great reliance on his brother's evidence and yet how they came to find each other is inconsistent. In any event I accept the submission of Ms Gledhill that if they did have a mutual friend (P) it would not make sense that he did not make the connection earlier.

[29] Ms Gledhill invited the finding that the appellant and [HS] are not brothers. However I find that the appellant has established on the lower standard that they are related. In the Decision and Reasons [HS] referred to a brother (albeit the spelling is slightly different) and the age would be correct (21 years at the time). I find that at this time the appellant had not been encountered and had not made an asylum claim. However I do not find their account of how they found each other credible and I do not accept that they were not in touch prior to September 2017. I have found neither to be a credible witness in this hearing, despite the findings of FTTJ Borsada.

[30] The account given by [HS] as recorded by FTTJ Borsada is also not consistent with the account given by the appellant. The appellant states he went on the demonstration without informing his family where he was going and then he was arrested and detained. His family therefore would have been unable to trace him. [HS]'s account in his asylum hearing was that his brother had already left the country having decided himself to get out of Egypt and he did not know whether he had been successful. However the appellant went on a demonstration and had not decided to leave the country until several months after his brother left, a fact he could not have known. [HS] allegedly left in April 2014 and the appellant found his mother in June 2014 and left some months later.

[31] At paragraph 2 of the appellant's witness statement the appellant states that when he left home in January 2011 his youngest brother and sister ([W] and [N]) had not been born. He later states that he met them for the first time when he returned to the family home in June 2014. However in February 2017 [HS] states that [W] was aged 9 years ([N] was 3 years). Therefore [W] would have been born in 2008-2009 and would have been alive in January 2011. Although I accept this is a minor point it adds further to the inconsistencies between the two accounts.

[32] The inconsistencies highlighted above lead me to find that the appellant is not a credible witness and I do not accept that he was sentenced to 25 years imprisonment or detained and that he escaped and left Egypt fearing for his life. Nor do I accept that he is implicated in his father's alleged involvement with the Muslim Brotherhood. I have rejected the credibility of his brother's account. I do not accept that their family are under threat in Egypt and they are being treated as terrorists. I find their respective accounts of their contact with their mother and discussions about this lacking in credibility."

18. I observe that none of the reasons there given impact on [HS]'s own account that he is at risk because of his own participation in the 2013 protests. The credibility issues in this appeal which are relevant to [HS]'s case go only to the risk based on

the Appellant's father's political affiliations to the Muslim Brotherhood. Judge Farmer, unlike Judge Borsada, had two witnesses before her giving what was said to be corroborative evidence. Unfortunately, for the Appellant, the Judge found that evidence to be inconsistent for reasons which she has given. Those reasons adequately explain why the Judge found [HS] not to be credible in his evidence in the appeal before her, notwithstanding the earlier positive findings. [HS]'s claim bears some similarities to the Appellant's but is materially different.

19. Simply because [HS] has been found to be a refugee, therefore, does not mean that Judge Farmer was bound to accept that the Appellant is also a refugee. Returning to the Court of Appeal's judgment in Otshudi cited at [9] above, it is also the case that, just because Judge Farmer differs in her conclusion to Judge Borsada, does not mean that Judge Borsada is right and Judge Farmer is wrong.
20. I also observe that, once it is accepted that Judge Farmer was entitled to reach the conclusion she did on the first limb of the Appellant's claim, this means that the Appellant was at liberty in Egypt between 2013 when his father is alleged to have disappeared and about 2015 when the Appellant left. Although he says that he was in hiding between June 2014 and when he left, he does not of course say that he was in hiding between the protests in 2013 and 2014 because on his case he was detained. However, the Judge was entitled to disbelieve that claim for the reasons she gives. It follows that the Appellant cannot show that he would be at risk on return.
21. For the sake of completeness, I also note that the Judge goes on at [34] of the Decision to point out that the background evidence shows that those who were ill-treated by the previous regime may now be able to seek compensation. To the extent that the Appellant relies on his ill-treatment by the previous administration therefore he could not claim to be at risk on that account.
22. For the above reasons, I am satisfied that the Decision does not contain a material error of law. I therefore uphold the Decision.

DECISION

I am satisfied that the Decision does not contain a material error of law. I uphold the decision of First-tier Tribunal Judge Farmer promulgated on 12 January 2018 with the consequence that the Appellant's appeal stands dismissed

Signed



Upper Tribunal Judge Smith

Dated: 26 July 2018