



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

Appeal Number: PA/00915/2018

THE IMMIGRATION ACTS

**Heard at Glasgow
on 15th March 2019**

**Decision & Reasons
Promulgated
On 1st April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DEANS

Between

**HM
(Anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr A Caskie, Advocate, instructed by Livingstone Brown, Solicitors

For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This appeal is against a decision by Judge of the First-tier Tribunal Debra Clapham dismissing an appeal on protection and human rights grounds. Permission to appeal was granted by the First-tier Tribunal.
2. The appellant is a national of Egypt. He claims to be at risk there on grounds relating to religion or political opinion. His evidence is that he is a member of the Muslim Brotherhood and has been detained on one occasion by the Egyptian authorities.

3. For the purpose of the appeal to the First-tier Tribunal a medical report was obtained from a consultant psychiatrist. At his examination the appellant described to the psychiatrist “a number of complex beliefs of a historical, mythological nature that could well be delusional”. The psychiatrist expressed a strong suspicion that the appellant suffers from a mental disorder. This was “likely to be a psychotic illness with or without a trauma-related diagnosis as well. The psychiatrist, however, acknowledged that he had limited information, having examined the appellant only once and having no paperwork relating to the “asylum review”.
4. The Judge of the First-tier Tribunal heard the appellant give evidence at some length about his beliefs, which are described in the application for permission to appeal as “atypical”. In the judge’s findings, at paragraph 105, she stated that the medical report showed “no diagnosis of any mental illness.”
5. Permission to appeal was sought on four main grounds. The first of these was that the judge erred by not treating the appellant as a vulnerable witness and following the Joint Presidential Guidance Note No 2 of 2010 on children and vulnerable adults. It was not necessary to have a medical diagnosis before treating the appellant as a vulnerable witness. Had the judge followed this guidance some of the perceived inconsistencies in the appellant’s evidence might have been explained.
6. The second ground was that the judge failed to have proper regard to the psychiatric evidence. Although there was no diagnosis of a mental health disorder the judge should have had regard to the content of the report in making a holistic assessment of credibility.
7. Thirdly it is contended that the judge made no finding as to any religious faith held by the appellant and, in particular, whether his atypical beliefs were genuine and whether because of them the appellant might be treated as an apostate. Fourthly, although the judge heard evidence from the appellant’s wife, it is contended that the judge made no credibility finding in respect of her evidence. This was said to be a material error because her evidence was that the appellant actively sought to “spread” his beliefs to others.
8. At the hearing before me there was a lengthy discussion of the significance of the psychiatric report for the hearing before the First-tier Tribunal. Mr Caskie submitted that the strong suspicion of mental disorder should have alerted the judge to treat the appellant as a vulnerable person. By not doing so the hearing was rendered unfair. The judge did not make findings on whether the appellant’s atypical beliefs were genuine and whether he would broadcast these in Egypt, which in her evidence the appellant’s wife said he would.

The appeal required to be reheard at a fair hearing where proper consideration would be given to the appellant's vulnerability.

9. Mr Govan submitted that the judge was clearly aware of the terms of the psychiatric report, which was based on very limited information. In this regard Mr Govan referred to JL (medical reports credibility) [2013] UKUT 145. Mr Govan submitted that at paragraphs 105-109 the judge made findings on the appellant's beliefs and about his behaviour when he had been in Egypt. If the evidence was such that the judge could not draw conclusions about the appellant's beliefs she was entitled to say so. The judge looked at the evidence both of the appellant and of his wife and there was no material error in not making a distinct finding as to the credibility of the appellant's wife's evidence. This was addressed at paragraphs 107 and 112 of the decision.
10. I informed the parties that I would reserve my decision on the issue of whether the Judge of the First-tier Tribunal erred in law.

Discussion

11. I will begin my consideration by stating that even if the Judge of the First-tier Tribunal erred by not expressly treating the appellant as a vulnerable person, I do not consider there was any unfairness in the conduct of the hearing. The judge allowed the appellant to give his evidence and explain his beliefs at some length. As Mr Caskie submitted, where the alleged vulnerability of the appellant would have been more relevant would have been in the assessment of his evidence and, in particular, in having full regard to any supporting evidence.
12. It was Mr Govan's submission that the evidence was such that the judge was unable to make findings on some issues. For example, at paragraph 106 the judge said she was unable to ascertain what the appellant believed, although she noted he maintained he is a Muslim. At paragraph 113 she expressed doubts about whether the appellant was a member of the Muslim Brotherhood or of the Justice Party. Although the judge expressed her uncertainty about these matters, in doing so I am not satisfied that she had regard to all the evidence which was available to her.
13. In addition, at paragraph 106 the judge questioned whether the appellant "will actually be taken seriously if indeed he holds these beliefs". This is not the question the judge should have been addressing. Instead she should have asked whether the appellant would face a real risk of persecution or serious harm in Egypt because of his beliefs if these were genuinely held and publicly professed.

14. Of, course, it was important to consider how the appellant would behave in Egypt. At paragraph 107 the judge referred to the appellant when he was studying in the UK having been warned by his father not to return to Egypt. The appellant returned anyway and married and obtained employment. The judge seems to have referred to this as indicating an inconsistency in the appellant's evidence rather than relying upon it as showing the appellant would be able to live safely in Egypt. It casts very little light about what might happen to the appellant in future were he to return to Egypt and indeed it seems the judge did not intend to rely on this evidence for this purpose. It again illustrates though the extent to which the judge based her decision upon the appellant's evidence without giving adequate consideration to the evidence of his wife, to the details of the psychiatric report, and to the country information.
15. If the judge did not consider the appellant's evidence to be reliable it was all the more important for her to look at other evidence which might cast light upon the issues before her. I refer here principally to the evidence of the appellant's wife and the psychiatric report as well as any country information which was before her. It was not enough for the judge to conclude that she could not make findings on certain issues when she failed to have regard to all the evidence before her.
16. For example, at paragraph 82 of the decision the judge recorded the appellant's wife's evidence that he was a member of the Muslim Brotherhood and, at paragraph 78, that he was in danger from the Muslim Brotherhood because he had left the party. The judge recorded at paragraph 76 his wife's evidence that the appellant was "arguing" until he left Egypt. He would go out and express his beliefs. Although he did not mean to, he was putting his wife's and children's lives at stake by doing this. At paragraph 8 of the psychiatric report the appellant is recorded as saying he could not keep the information originating from his beliefs to himself. In her findings the judge either ignores this evidence or dismisses it cursorily without adequate reasoning.
17. I consider that the judge erred in her analysis of the issues she had to decide and in her failure to make properly supported findings based upon all the evidence before her. In particular, in considering whether the appellant's beliefs were genuinely held and would be publicly professed, the judge failed to have proper regard to the appellant's wife's evidence and to the details of the psychiatric report. The judge did not take into account the appellant's wife's evidence on the appellant's alleged membership of the Muslim Brotherhood. The judge did not make an adequately reasoned finding on the credibility of the appellant's wife's evidence. Given the unusual nature of this appeal and the apparent difficulty in

relying upon the appellant's own evidence, all these errors are material.

18. Because of the errors set out in the preceding paragraph the findings made by the judge are unsafe and cannot be relied upon. The proper course is for the appeal to be reheard. In view of the degree of fact-finding required it is appropriate to remit the appeal to the First-tier Tribunal, in terms of paragraph 7.2(b) of the Practice Statement. The appeal is remitted to be reheard before a differently constituted tribunal with no findings preserved.

Conclusions

19. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
20. The decision is set aside.
21. The appeal is remitted to the First-tier Tribunal to be reheard before a differently constituted tribunal with no findings preserved.

Anonymity

The Judge of the First-tier Tribunal did not make a direction for anonymity. In order to preserve the positions of the parties until the appeal is finally decided, I make a direction in the following terms. Unless or until a court or tribunal directs otherwise no report of these proceedings shall directly or indirectly identify the appellant or any member of his family. This direction applies to the appellant and the respondent. Any failure to comply with this direction may give rise to contempt of court proceedings.

M E Deans
27th March 2019
Deputy Upper Tribunal Judge