Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08109/2018

THE IMMIGRATION ACTS

Heard Columbus House, Newport	**Decision & Reasons Promulgated**
On 7 February 2019	**On 25 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE L J MURRAY

Between

S S H G
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Lowis, Counsel
For the Respondent: Mr Howells, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Egypt. His claim for asylum and humanitarian protection made on 26 January 2018 was refused by the Respondent on 21 June 2018. He appealed against this decision to the First-tier Tribunal and his appeal was dismissed by First-tier tribunal Judge Richardson in a decision promulgated on the 1 November 2018. The Appellant sought permission to appeal this decision and permission was granted by First-tier Tribunal Judge Blundell as he considered it arguable that the Judge erred in finding that the Appellant's failure to flee to a neighbouring country told against his credibility when this was not part of

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the Respondent's case either in the refusal letter or at the hearing. Further, whilst the two further grounds which related to the Judge's findings about the Appellant's ability to obtain a copy of his arrest warrant appeared less meritorious permission was nevertheless granted.

The Grounds

2. Ground 1 alleges that the First-tier Tribunal failed to give adequate reasons for rejecting material background evidence in relation to an arrest warrant. The Judge found that it was highly unlikely that had an arrest warrant been issued it was not possible to obtain a copy. The Judge referenced the Appellant's own legal career and contacts in Egypt who could have checked for a warrant. It is asserted that she rejected the evidence on the basis that Professor Joffe was simply relying on what the Appellant told him that arrest warrants are only physically served when an arrest warrant is actually carried out. It is asserted that Professor Joffe did not rely on the Appellant's evidence that an arrest warrant was served at the point the arrest was carried out but attributed his findings to the US State Department report and extracts from the Penal Code quoted at page 34 of the report. It is asserted that as the Appellant was not arrested, the arrest warrant would not have been served and there was no evidence before the Judge to suggest that arrest warrants were otherwise publicly accessible by third parties. It is said that the First-tier Tribunal did not give adequate reasons for ignoring the evidence of the expert.

3. Ground 2 alleges that the First-tier Tribunal failed to give adequate reasons for rejecting material background evidence in relation to the issue of whether the Appellant would have been arrested at the airport when leaving Egypt. The Judge found that Professor Joffe's assertion that the airports would not necessarily have been notified of the warrant was 'pure speculation' as Professor Joffe did not claim to have knowledge of the administration of the Egyptian Security department. She found that it was more likely the case that the Appellant would have been placed on a stop list at airports as soon as the security forces discovered that he was missing at two addresses and his family did not know where he was. Professor Joffe's evidence was that the arrest warrant would not necessarily have been notified to airports, his name would not have appeared on a stop list and thirdly even if his home had been searched before he left Egypt the administrative procedures attendant on the notification of ports and airports might not have been completed.

4. It is argued in the grounds that not only was Professor Joffe qualified to comment on the basis of his knowledge and expertise but also his opinion was buttressed by evidence in the bundle. Further, it was not incumbent on the expert to repeatedly confirm their specific expertise in each narrow matter addressed in the report. It is submitted that in the absence of any countervailing evidence the Judge did not adequately explain why he was justified in dismissing the background evidence on this key issue.

5. Ground 3 asserts that the Judge's key finding that it was implausible that the Appellant took the risk of leaving the country via the airport rather than leaving the country via Jordan or Saudi Arabia was unfair as these points were not put to the Appellant at the hearing or in the refusal letter. The Appellant, it is asserted, would have had an answer to these points.

The Hearing

6. The appeal therefore came before the Upper Tribunal in order to determine whether there was an error of law in the decision of Judge Richardson and if so whether to set that decision aside.

7. There was no Rule 24 Response. Mr Howells stated that the Respondent's position was that there was no error of law. I heard submissions from both representatives. Ms Lowis relied on her skeleton argument. She submitted that the main point in grounds 1 and 2 arising from the treatment of the expert report was that it may be open to reject part of expert evidence looking at the evidence in the round but the Judge had to give a reasoned justification. The two main basis for rejection were erroneous. Professor Joffe did not rely on the Appellant's account and did not speculate because he was an expert. Looking at the issue of the arrest warrant at paragraph 12 onwards of the skeleton argument, at paragraph 15 to 22 Professor Joffe looked at the basis of the Respondent's refusal and commented on the plausibility of his responses. At paragraph 20 at p6 of his report in relation arrest warrants it was his own expert opinion and that opinion was supported. At p7 he concluded that the Appellant's claims were plausible and considered his claim as a whole.

8. With regard to the issue of the warrant and whether he would have been able to leave the airport, Professor Joffe said at page 35 at paragraph 16 that in his view it was plausible that the warrant had not been issued although planned or that he would not have a copy because one was only given on arrest. It was not necessarily issued at airports. The Judge was wrong to say that this was pure speculation. It was accepted that he was an expert on Egyptian affairs generally and it was far more within his expertise than that of the Judge himself. At paragraph 40 the Judge found that it was more likely the case that he would have been placed on a stop list at airports. The Judge had speculated and there was no evidence relied on in support of this finding.

9. In relation to Ground 3 and the credibility of an ability to flee to a neighbouring country this did not form part of Respondent's case. It was open to the Judge to come her own conclusions but it was never put to the Appellant. This was not the kind of point that was an obvious point which was adverse to credibility. It was an issue which the Appellant addressed at paragraph 23 of his witness statement where he explained why he took the airport and expressly stated the options. It was not put to him that he should have travelled overland and had it been put he would have said that he could not. There was no land border with either of the countries and he would have had a response that the authorities of those countries

were supportive of the regime. It was clear from the Judgement that it did form an important part of why the Judge found against him. There were other errors which suggest that the decision should be considered as unsafe. At paragraph 16 of the Judgement in setting out the law the Judge referred firstly to his case of fear of persecution in Indonesia which was evidence of lazy Judgment writing and at paragraph 34 having set out the Appellant's case the Judge stated that on own evidence he did not engage in political activity since the coup but he had. The decision as a whole was unsafe.

10. Mr Howells submitted that it was clear from this determination that the Judge was alive to the report from Professor Joffe and referred to it in the findings. Paragraph 29 showed that the Judge was aware of the contents of the report that arrest warrants were only physically served when arrests were carried out. The Judge said that this did not appear to be the case with the Appellant that referred back to paragraph 6 (vi). The Appellant moved his wife and child. At paragraph 29 Judge distinguished the factual matrix from what the Appellant and Professor Joffe were saying and it was open to him to refer to the Appellant's background at paragraph 35. Those findings were open to the Judge on the Appellant's evidence that an arrest warrant had been issued. In response to Ground 2 it was open to the Judge to make finding at paragraph 39 about inconsistent behaviour. It was also open to her to make the finding at paragraph 40 in relation to the stop list because she noted what Professor Joffe said and found it unlikely. The Judge was referring to his claim that the authorities were well-aware before he left he was missing at two addresses. Mr Howells accepted that it was not put at the hearing that he could alternatively have gone to Jordan or Saudi Arabia and this appeared to have occurred to the Judge after the hearing. It was not material because the Judge gave other reasons why he was an economic migrant.

11. The parties agreed that the appeal should be remitted for de novo hearing if there was a material error.

Discussion

12. The Appellant relied on the report of Professor Joffe, an acknowledged expert who has frequently given evidence before the Upper Tribunal. Professor Joffe addressed the issue of the arrest warrant at paragraphs 19, 20 and paragraph 43 of his report. In relation to Ground 1, the Judge stated at paragraph 29 of the decision that Professor Joffe relied on and repeated what the Appellant said. I find that the Judge was clearly mistaken to say that Professor Joffe relied on what the Appellant said in relation to the service of arrest warrants as at paragraph 43 of the report he justified the conclusion that arrest warrants are handed to the intended recipient on arrest. However, the Judge noted this evidence at paragraph 30 and the evidence cited in the report that the Egyptian Constitution requires the issue of an arrest warrant prior to arrest but that in 2017 there were numerous reports of arrests without warrants. The Judge also noted Professor Joffe's reference to the Amnesty international report that

referred to documented occasions in which police had detained individuals after forcing their way into homes without producing an arrest warrant. The Judge then correctly noted that the Appellant's case did not fall into those categories because the Appellant claimed that an arrest warrant had been issued possibly only 'verbally'. The Judge's reference to Professor Joffe relying on the Appellant's evidence in respect of the arrest warrant did not lead to any adverse credibility findings or any failure to take the expert evidence in relation to the procedure for the issue of arrest warrants into account. I therefore do not find that Ground 1 is made out.

13. Ground 2 impugns the Judge's findings that Professor Joffe indulged in speculation in relation to whether the airports would have been notified of the warrant and the Judge's finding, contrary to the evidence of the expert that it was more likely that the Appellant would have been placed on a stop list at airports as soon as the security forces discovered that he was missing at two addresses. Professor Joffe gave his opinion at page 35 that the Appellant's friend may have discovered that his arrest was planned but that the warrant had not been issued. Because it had not been issued, he states that it would not necessarily have been notified, for example to airports, and his name would not have appeared on a stop-list. The latter point is referenced by way of a footnote. Further, he states that even though his home had been searched before he left Egypt, the administrative procedures attendant on the notification of ports and airports might not have been completed.

14. Professor Joffe set out his qualifications and his expertise and publications on the Middle East and North Africa at the beginning of his report. He also set out his duty as an expert and that his opinions represented his professional opinion. He also sets out that he has made clear which facts and matters that refer to the appellant are within his knowledge and which are not. Professor Joffe was therefore not, as the Judge concluded at paragraph 32, speculating about administrative procedures but drawing upon his professional knowledge and expertise. It was not incumbent on Professor Joffe to specify precisely the basis of his expertise in respect of every aspect of his opinion. I find that these were matters within his knowledge in respect of which he was entitled to give an expert opinion. He gave reasons for concluding that the arrest warrant may not have been notified to airports and that the Appellant's name would not have appeared on a stop list even though his home had been searched. The Judge's finding that Professor Joffe was speculating in relation to stop-lists led to a further finding, at paragraph 40, that it was more likely that the Appellant would have been placed on a stop-list at airports as soon as the security forces discovered he was missing at the two addresses and his family did not know where he was. No background evidence is cited for this conclusion which is contrary to the opinion of the expert.

15. In the circumstances I find that the First-tier Tribunal materially erred in finding that Professor Joffe's opinion was based on speculation and in failing to give adequate reasons grounded in the background evidence for

replacing the expert's opinion with her own in relation to the Appellant's name being on a stop-list. Ground 2 is therefore made out.

16. The Respondent accepts that it was not part of his case that it adversely affected the Appellant's credibility that he did not travel to Jordan and Saudi Arabia overland and then fly from these countries. It is also accepted that this was not put to the Appellant. In **WN (DRC) [2004] UKIAT 00213** the Tribunal held that it is not necessary for obvious points on credibility to be put to the appellant, where credibility was generally an issue in the light of the refusal letter or as a result of later evidence. However, the Tribunal said that where the point was important to the decision but it was not obvious, or where credibility had not been raised or did not obviously arise from new material, or where the appellant was unrepresented, it was generally better to raise the points and this could be done by direct questioning of the witness.

17. This was not an obvious point and I find that it was one which should have been put to the Appellant in order for him to give an answer and in the absence of an opportunity to do so the adverse credibility finding was not fairly open to the Judge to make.

18. In light of the fact finding required and the agreement of the parties I remit this matter for a de novo hearing before a Judge other than Judge Richardson.

Decision

The decision of the First-tier Tribunal contained a material error of law and I set it aside.

I remit this matter for a hearing before a Judge other than Judge Richardson.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date 18 March 2019

Deputy Upper Tribunal Judge L J Murray