



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

Appeal Number: PA/09575/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 19 December 2018**

**Decision &
Promulgated
On 16 January 2019**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

**EE
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K Tobin, instructed by Polpitiya & Co Solicitors
For the Respondent: Ms H Aboni, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Egypt born on 8 September 1980. She is appealing against the decision of Judge of the First-tier Tribunal Greasley promulgated on 21 September 2018 to dismiss her appeal against the decision of the respondent to refuse her protection and human rights claim.

Background

2. The appellant entered the UK as a student in 2013 and remained unlawfully following the expiry of her visa.
3. The appellant is a Sunni Muslim, who claims to be from a traditional/religious family.
4. In September 2016 the appellant commenced a relationship with ZH, who is a Shia Muslim, and in May 2017 they began cohabiting. ZH was mentally and physically abusive to the appellant and the relationship ended in September 2017 as a consequence.
5. The appellant claims to be at risk of serious harm if returned to Egypt because her father and brother have threatened to kill her. She claims that the reason for this is that ZH informed her father that he is a Shia and that he had been living with her.
6. The respondent accepted that the appellant had been the victim of domestic abuse from ZH, but not that she is at risk of being killed by her father and brother if returned to Egypt.
7. To support her claim that ZH had told her father they had been cohabiting, the appellant, inter alia, submitted screen shots of electronic communications between her and ZH, covering a period at the end of September 2017. It is apparent from these messages that ZH was upset with the appellant and trying to get her to come home. For example, in a text on 23 September 2017, he stated:

“I can’t sleep can you come home pls I’m sorry for what I said I just gt little angry and you know I didn’t mean what I say”.

In one of the messages (a message sent on 21 September 2017) ZH referred to a conversation with the appellant’s father. He stated:

“only when I spoke to your dad I found out ur ok”.

8. The appellant also submitted screen shots of electronic communications with her mother. Although in Arabic, at the top of the screen, in English, it says “Mama”. The translation states:

“I do not know what to do with your father, he refuses to hear anything good about you. It’s all [ZH]’s fault, he made your dad hate you.... He considers that you tarnished his honour and swore to kill you when you come back so as to restore his honour. I fear for your safety from your dad...I must delete the messages, fearing that they might be seen by your dad or Ahmed which would be a disaster.”
9. The appellant also submitted a report from Camden Safety Services dated 25 October 2017 which referred to ZH telling the appellant’s family in Egypt about their cohabitation and that he is a Shia Muslim.

10. The appellant also submitted expert evidence concerning the treatment of women in Egypt and the prevalence of crimes of honour.
11. The judge accepted the unchallenged evidence that ZH abused the appellant both physically and verbally. However, the judge did not accept the appellant's account of being at risk from her family or that ZH had contacted them.
12. The judge gave a number of reasons for not finding the appellant's account credible. Amongst the reasons were the following:
 - a. At paragraph 63 of the decision, the judge stated that the electronic (WhatsApp messages) communications between ZH and the appellant "do not specifically state or allege that [ZH] had been in contact with the appellant's family..."
 - b. In paragraph 63 the judge also stated that:

"It is relevant, to my mind, that there is no credible or identifiable communication sent to the appellant from either the mother or father which I find to be surprisingly given the allegations made by the appellant. Although the appellant has provided translated text messages, appearing at pages 64 and 65 of the appellant's bundle, that she claims is from the mother... I find that I cannot verify the identity of the individual who sent the messages and therefore I am unable to make any clear finding that the author was in fact the appellant's mother stop the messages failed to identify either the sender or the receiver of these messages - they could have been sent or received by anyone."

Analysis

13. Three main arguments are made in the grounds of appeal and were advanced by Ms Tobin.
 - a. Firstly, it is argued that the judge made a factual error when stating that the electronic communications between the appellant and ZH did not state that there had been contact between ZH and the appellant's family.
 - b. Secondly, the grounds contend that the judge erred by failing to have regard to the electronic communication from the appellant's mother concerning the threat posed by the appellant's father.
 - c. Thirdly, it is argued that the judge erred by not having regard to the Camden safety services report (referred to above at paragraph 9).
14. Ms Aboni, on behalf of the respondent, argued that the judge adequately considered the evidence of electronic communications and was entitled to conclude that they were unclear. With respect to the Camden safety services report, she argued that this merely summarised the appellant's account and as such was not independent evidence that could properly further her claim.

15. In my view, the judge's assessment of the appellant's credibility is undermined by three material errors.
16. The first error concerns the evidence of ZH speaking to the appellant's father at the time he separated from the appellant. The judge stated in clear terms at paragraph 63 of the decision that the screenshots of messages between the appellant and ZH do not show that ZH had been in contact with the appellant's family. However, in a message dated 21 September 2017 (quoted above at paragraph 7) ZH stated that he had spoken to the appellant's father. In finding that the messages do not show contact between ZH and the appellant's family, the judge has made a clear error. The error is material because evidence that ZH spoke to the appellant's father at a time when their relationship was breaking down (and when, as can be seen from the other message quoted above at paragraph 7, ZH was angry with, and felt the need to apologise to, the appellant) tends to support the appellant's account. If the judge had appreciated that the contemporaneous documentary evidence indicates that ZH telephoned the appellant's father at the same time that he admitted to being angry with the appellant, he may have reached a different view on whether ZH disclosed the information as claimed by the appellant.
17. The second error concerns the judge finding that there was no credible or identifiable communication from the appellant's mother when the bundle of evidence included a screenshot of a communication from the appellant's mother. In my view, the judge's reasoning for rejecting this evidence does not withstand scrutiny. The screenshot clearly identifies that the communication is from "Mama" and it is clear from the context (where the message refers to "your dad or Ahmed [the appellant's brother]") that the message is likely from the appellant's mother.
18. The third error of law concerns the failure to have regard to the Camden Safety Services report. Whilst Ms Aboni is correct that this document merely repeats what the appellant has said, the significance of it is that it was written several months prior to the claim for asylum. It is, in my view, material that at around the same time the appellant was escaping from her violent partner (ie at a time of significant vulnerability) she gave an account concerning her family in Egypt to Camden Safety Services which is broadly consistent with the account she gave when claiming asylum several months later.
19. In light of the errors described above, the decision of the First-tier Tribunal cannot stand.
20. Although I reserved my decision at the hearing, both parties argued that if I were to find an error of law the appeal should be remitted to the First-tier Tribunal. I agree. The appellant's account and credibility will need to be considered afresh. The likely extent of further fact-finding that will be required is such that, in accordance with Section 7.2(b) of the Practice Statements of the Immigration and Asylum Chambers of the First-tier

Tribunal and the Upper Tribunal, the appeal should be remitted to the First-tier Tribunal.

Notice of Decision

- A The decision of the First-tier Tribunal contains a material error of law and is set aside.
- B The appeal is remitted to the First-tier Tribunal to be considered afresh by a different judge.

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



Deputy Upper Tribunal Judge Sheridan Dated: 8 January 2019