



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10374/2018

THE IMMIGRATION ACTS

Heard at: Birmingham Civil Justice Centre
On: 22nd February 2019

Decision & Reasons Promulgated
On: 8th March 2019

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

MAM
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Masih, Braitch RB Solicitors
For the Respondent: Mrs Aboni, Senior Home Office Presenting Officer

DECISION & DIRECTIONS

1. The Appellant is a national of Egypt born in 2001. He appeals with permission the decision of the First-tier Tribunal (Judge VA Cox) to dismiss his human rights and protection appeal.
2. It is not in issue that the Appellant was only 15 when he illegally entered the United Kingdom on the 22nd June 2016. On that same day he claimed asylum on the grounds that he feared arrest and ill-treatment by the Egyptian authorities because his parents and brother had been identified as suspected members/supporters of the Muslim Brotherhood.

3. For reasons not entirely clear the Respondent did not make a decision on that asylum application for over two years. The decision letter is dated the 9th August 2018. Therein the Respondent identifies numerous discrepancies in the Appellant's account and rejects it as not credible. As for the possibility of returning him as an unaccompanied asylum-seeking child the Respondent acknowledges that he had not to date undertaken any family tracing activity, and would not now be doing so. Reference is made to the decision in LQ (Age: immutable characteristic) Afghanistan [2008] UKAIT 00005; the Respondent accepts that at the age of 17 the Appellant was a member of a particular social group, and that there are not in place adequate reception arrangements to return him, but finds that Appellant would not be at risk as a result of his age.
4. The First-tier Tribunal, by its decision of the 3rd October 2018, upheld the reasoning of the Respondent. The Tribunal also rejected the account of 'Muslim brotherhood' persecution, and gave numerous reasons for doing so. As to the potential risk that the Appellant might face as a child - 'LQ' harm - the Tribunal said this:

"100. I find that the Respondent is wrong and that adequate reception arrangements can now be made for the Appellant. I do not find due to the advantages of his education both in Egypt and in the United Kingdom he is at risk as a result of his age as he approaches his majority. He is now, I find, a resourceful, relatively well educated and bilingual man. Having considered all of the objective evidence regarding people in Egypt and risks relating to age, vulnerability by virtue of homelessness, exploitation and street children generally. The Appellant will not be vulnerable for those reasons and can be reunited with his family".

On that basis the appeal was dismissed on protection and human rights grounds.

5. The Appellant does not now seek to challenge the First-tier Tribunal's findings in respect of the 'Muslim brotherhood' limb of his claim. His single ground of appeal concerns the findings on the risk of 'LQ' harm. At the date of decision the finding of the Tribunal was a) that he was a child and b) he was not in contact with his family in Egypt. As such the Tribunal materially erred in basing its decision on speculation about what circumstances might pertain in the future, in respect of possible contact with family members. Reliance is placed on the decision in Saad, Diriye and Osario [2001] EWCA Civ 2008 which confirmed that the assessment of risk must be made at the date of the appeal. It is submitted that any suggestion that the Appellant is not entitled to refugee status because any risk of harm as a child would be diminished in the future, when hypothetically speaking contact with his family can be established, is erroneous. The Appellant submits that there was no evidential basis for rejecting the Respondent's concession that adequate reception arrangements could not be made. Nor did the Tribunal give any consideration to the fact that

there had been a two year delay between claim and interview, rendering any information that the Appellant might have about his family's whereabouts of limited value.

6. Notwithstanding the negative credibility findings reached by the Tribunal in respect of the 'Muslim brotherhood' account, First-tier Tribunal Judge Haria considered the grounds as set out above sufficiently arguable to warrant a grant of permission.
7. Before me Mrs Aboni submitted that the findings of the Tribunal were adequately reasoned and open to it on the evidence. It was entitled to conclude that the Appellant would be able to re-establish links with his family and the fact that the Secretary of State had failed to discharge his tracing responsibilities was in the circumstances irrelevant.

Findings

8. I am satisfied that the grounds are made out. It was not the Judge's finding that the Appellant was in contact with family members at the date of the appeal. At the date of the appeal it was accepted that such contact had not been established, and that the Appellant was a minor. The Respondent accepted that adequate reception arrangements could not be made. As the grounds of appeal note with reference to Saad, Diriye and Osario, it is trite asylum law that risk must be assessed as of the date of hearing. Furthermore it is not clear what the evidential base might have been for the conclusion that notwithstanding the failure of any efforts hitherto, the Appellant would be able to re-establish contact with his family, who could meet him on arrival and assist him with his reintegration.
9. I accept that the First-tier Tribunal erred in law in these respects. The errors went to the 'LQ' element of the protection claim, and to the Tribunal's findings on Article 8 both within and outwith the Rules.
10. I am satisfied, having heard Ms Masih's submissions, that the error was material. There was for instance country background material before the First-tier Tribunal capable of demonstrating that a young unaccompanied asylum seeker could face risks in Egypt akin to those discussed in the context of Afghanistan in LQ. Furthermore the finding that the Appellant could reunite with his family was plainly material to the Article 8 analysis.

Disposal

11. The parties agreed that the 'Muslim Brotherhood' findings are to be preserved. The findings of the First-tier Tribunal in respect of that part of the claim are to stand.

12. The 'LQ' limb of the Appellant's case was a discrete head of claim. The findings on that matter having been set aside for the reasons set out above, the parties agreed that the matter should be remitted to the First-tier Tribunal on this issue alone. The questions before the First-tier Tribunal are therefore limited to the following:
- i) Does the Appellant have a well-founded fear of persecution as a young person returned to Egypt without family support? (It will be observed that this requires the decision maker to assess whether family support is in fact available);
 - ii) Can the Appellant (now 18) demonstrate that there are very significant obstacles to his integration in Egypt? (see paragraph 276ADE(1)(vi) of the Immigration Rules)
 - iii) Can the Respondent demonstrate that the Appellant's removal would be a proportionate response to the interference with his established private life in the United Kingdom?
13. The matter is to be listed before a First-tier Tribunal Judge other than VA Cox. It is to be listed for 3 hours with an Arabic interpreter.

Anonymity

14. Having regard to the fact that this is a protection claim involving a young person I am prepared to make the following direction for anonymity, pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders.

"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".

Decision

15. The decision of the First-tier Tribunal is set aside to the limited extent identified above.
16. The issues identified at paragraph 12 above are to be redetermined in the First-tier Tribunal.
17. An anonymity order is in place.

Upper Tribunal Judge Bruce
6th March 2019