



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

Appeal Number: PA/13683/2017

THE IMMIGRATION ACTS

**Heard at RCJ Belfast
On 5 December 2019**

**Decision & Reasons Promulgated
On 19 December 2019**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**S H
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Brennan, solicitor

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

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge S T Fox promulgated on 24 April 2019 dismissing her appeal against a decision of the respondent made on 15 December 2017 to refuse her asylum and human rights claim.
2. In summary the appellant's case is that she and her husband were Coptic Christians, that her husband had been accused of converting a Salafi Muslim woman to Christianity in Egypt and that this had resulted in threats and attacks on the family as a result. The appellant fled Egypt with her

children, travelling to the United Kingdom, but later lost contact with her husband.

3. The Secretary of State's case is set out in the refusal letter which sets out in significant detail why it is that the Secretary of State did not believe the account given either as to the difficulties the appellant had faced as a Coptic Christian prior to the incident with the Salafi family or that incident having taken place.
4. The appeal was heard on 19 October 2018 but as is obvious the decision was only promulgated some six months later. There is no indication that there was a significant delay between the signing of the decision and the promulgation.
5. The judge sets out over a number of passages from [25] onwards why he does not accept the appellant's account and several passages in that, particularly at paragraphs [25] and [38], the judge refers to the evidence being vague and evasive and finally at paragraph [49] concludes that the appellant's account is a fabrication. He also concludes the appellant is an economic migrant, notes her failure to claim asylum in France and then at [51] and [52] makes observations with regard to Section 117B of the Nationality, Immigration and Asylum Act 2002 drawing, it would appear, inferences adverse to the appellant from the fact that her presence would not be desirable on that basis. Paragraph [52] ends:

"I am satisfied that Section 117 be applied to the Appellant's situation and that removal protocol should be engaged."
6. The judge then makes findings with regard to Section 8 of the 2004 Act. He then goes on to address asylum under the 1951 Act, again making reference to the appellant's credibility not being something that can be relied upon at paragraph [59], then making comments at [61] as to the availability of protection and the possibility of internal relocation. In particular, at [61] the judge says that the appellant was able to safely relocate to Cairo on the evidence before him. That however would appear to be inconsistent with what the evidence was at [45].
7. Finally the judge concludes at paragraph [87] that there were no substantial grounds for believing that the appellant, described as he, faces a real risk of suffering serious harm on return to Iraq.
8. Permission to appeal was sought on two relatively narrow grounds.
 - (i) that at paragraphs [51] and [52] of the decision the n Judge had considered the impact of Section 117 of the 2002 Act in the context of an asylum claim which was inappropriate and in taking this irrelevant material into the overall assessment of evidence in the round, the decision was flawed.
 - (ii) That the judge wrongly referred to the appellant not facing harm in Iraq whereas she is in fact from Egypt; and, the six month delay between the hearing and the promulgation of the decision indicated

that the judge had not a sufficient recollection on the basis of the appeal.

9. I deal first with the paragraphs [51] and [52]. Whilst observations with regard to Section 117 are relevant in considering a human rights appeal and indeed in consideration of family and private life the judge must have regard to the factors set out in Section 117B, they do not however have a place in assessing credibility in the context of an asylum claim. Mr Govan submits that these paragraphs can in effect be severed from the decision, the error here being one of structure rather than the taking into account of irrelevant matters.
10. It is, I consider, important to look at these paragraphs in the context of the decision as a whole. There is at [52] a clear concentration on issues of the appellant being a drain on the public purse and her integration into society would be hampered, all of which are negative factors. These are consistent with the finding that the appellant is an economic migrant at paragraph [50] and the somewhat unfortunate stock paragraph at paragraph [49] that again emphasises that issue. As Mr Govan submitted, there are a large number of credibility findings which have not been directly challenged and to which I have already referred. As against that the structure of the decision is such that paragraphs [51] and [52] clearly play a part in the asylum consideration because the judge then goes on to deal with Section 8 of the 2004 Act within paragraph [53] and clearly at [59] relies on the reasons set out above when assessing the credibility of the appellant in the context of making findings under the 1951 Convention.
11. It is I consider necessary before reaching a definitive conclusion on ground 1 to look at the grounds as a whole which involves consideration of ground 2.
12. I consider there is no merit in the submission with regard to the reference to Iraq. This is clearly a paragraph which has just been copied and pasted in from another determination as appears to be the case with a large part of this decision which contains stock paragraphs. The reference to Iraq I consider is simply unfortunate. It is not evidence that the judge was confused as to the country. It is the only mention of that country and it is clear from the context of the decision that he refers to Egypt at all other times.
13. It is not of course an error of law for a decision to be promulgated or to be written months after the hearing. That is because it is not an error of law to issue a decision so long after the hearing. But that is not to say that a delay of as long as six months is not relevant in assessing a decision. That is, I consider, particularly the case whereas here the judge has relied on a recollection of evidence he describes being evasive and vague.
14. Taking the grounds together and looking at the decision as a whole I consider that the judge's reference to paragraphs 51 and 52 was material

when combined with the delay and the reliance on descriptors of evidence such as vague, evasive and lacking in detail.

15. I have considered whether these errors were material given the judge's reference to the appellant's ability to relocate to an area where she would be safe but that was not a true consideration of the case taking it at its highest because as I have already said the appellant's evidence was that they were traced to Cairo and so it cannot be said in that the errors to which I have already alluded were immaterial.
16. Accordingly, for these reasons I conclude that the decision of the First-tier Tribunal involved the making of an error of law and I set it aside. I consider on this case, given that the errors go to the findings on credibility, that the matter must be remitted to the First-tier Tribunal for a fresh hearing de novo and for the avoidance of doubt none of the findings of fact reached by the First-tier Tribunal are preserved.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. The appeal is remitted to the First-tier Tribunal for a fresh decision on the issue of dependency between the appellant and the sponsor.

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 their 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 17 December 2019



Upper Tribunal Judge Rintoul