Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03832/2019 (V)

THE IMMIGRATION ACTS

Heard at Field House via Skype for Business	**Decision & Reasons Promulgated**
On Tuesday 15 September 2020	**On 21 September 2020**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

A D
[ANONYMITY DIRECTION MADE]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Chakmaktian, Counsel instructed by Wimbledon Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
An anonymity order was not made by the First-tier Tribunal. However, as this is an appeal on protection grounds, it is appropriate to make that order. 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, amongst others, to

both parties. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

BACKGROUND

1. The Appellant appeals against the decision of the First-tier Tribunal Judge D Ross dated 1 October 2019 ("the Decision"). By the Decision, the Judge dismissed the Appellant's appeal against the Respondent's decision dated 27 March 2019 refusing his protection and human rights claims. The challenge to the Decision relates only to the appeal on protection grounds.

2. The Appellant is a national of Egypt who came to the UK as a student in 2012. He did not claim asylum until 2016. His claim for asylum is based on his support for and membership of the Muslim Brotherhood. He claims to have attended demonstrations against the Egyptian authorities in support of that group in Egypt and in the UK. He claims to be at risk specifically because he says that the Egyptian authorities have become aware of his link to the organisation due to his association with friends who have, since his departure from Egypt, been prosecuted and convicted of activities in support of the group. He claims that a case has been brought against him.

3. The Judge accepted that the Appellant sympathises with the Muslim Brotherhood but did not accept that he had played any active role with the organisation. As such, for reasons I will return to, the Judge did not accept that the Appellant would have been targeted by the Egyptian authorities as he claimed and did not accept that he would be at risk on return.

4. The Appellant challenges the Decision on two grounds. First, he says that the Judge failed properly to understand or consider two crucial pieces of evidence, namely a medical report of Dr J Hajioff dated 29 August 2019 ("the Medical Report") and a court document purporting to show the conviction of the Appellant's friends and his association with them ("the Court Document"). In relation to the Court Document, the complaint made is that the Judge failed to appreciate that there was an amended translation of that document and therefore did not take into consideration the full import of it. The second ground concerns the Judge's reasoning on the specific aspect of the Appellant's claim, namely the risk arising from his association with his friends who had been convicted for activities in support of the Muslim Brotherhood and the perception therefore of his involvement with that group. It is said that there is an error of logic in the Judge's reasoning. As I will come to below, it may be more a case that the Judge has misunderstood this part of the Appellant's case.

5. Permission to appeal was granted by First-tier Tribunal Judge J M Holmes on 14 November 2019 in the following terms so far as relevant:

> "... 3. There appears to be little merit in the second ground, which is no more than a disagreement with the weight the Judge placed upon the evidence before him.
>
> 4. There are two limbs to the first ground; that the Judge omitted to consider the psychiatric evidence, and, a corrected translation of a document from Egypt – both of which could have a bearing on his assessment of the credibility of the Appellant's evidence. These are arguable, since although both are mentioned in the decision (eg [17]) it is arguable there is no adequate analysis of the content".

6. The appeal came before me first on 24 January 2020. The Appellant and his representatives failed to attend for reasons given in my adjournment decision dated 24 January 2020 and therefore I directed that the hearing be adjourned and relisted after 27 January 2020.

7. Due to the interruption of normal Tribunal business by the Covid-19 pandemic, a Note and Directions were issued by the Vice-President on 24 March 2020, indicating that it might be possible for the error of law issue to be determined on the papers and without a hearing. The views of the parties on that proposal were sought. Written submissions were made by the Appellant on 23 April 2020, by the Respondent on 28 April 2020 and in reply by the Appellant on 7 May 2020. The Respondent's submissions also stand as her Rule 24 Reply. In the Appellant's Reply, an oral hearing was requested.

8. The error of law hearing was accordingly listed to be heard orally. Notice of the hearing before me was sent to the parties on 20 August 2020 indicating that the hearing would be conducted remotely via Skype for Business given the current restrictions caused by the Covid-19 pandemic. Neither party objected to that course. The hearing was attended via remote means by Mr Chakmaktian as Counsel for the Appellant and Mr Melvin as Senior Home Office Presenting Officer for the Respondent. They confirmed that there were no technical issues and that they were able to follow the hearing throughout. I had before me a bundle and supplementary bundle filed by the Appellant in the First-tier Tribunal before Judge Ross as well as the amended translation of the Court Document and the written submissions as aforesaid.

9. The matter comes before me to determine whether the Decision contains an error of law and, if I so conclude, to either re-make the decision or remit the appeal to the First-tier Tribunal to do so.

DISCUSSION AND CONCLUSIONS

10. I deal with the Appellant's grounds in order. Although the indication given by Judge Holmes was that ground two had little merit, permission was not refused on that ground and Mr Melvin agreed therefore that I could and

should consider it. There is, as I will come to, a degree of overlap between that and the first ground, particularly in relation to the Court Document.

11. Before turning to consider the grounds, it is helpful to set out the main findings and reasoning of the Judge for rejecting the asylum claim in order that those grounds can be set in context. Those findings appear at [20] to [22] of the Decision as follows:

> "20. It is accepted by the respondent that the appellant is a sympathiser with the brotherhood, but on being questioned about his role in the organisation, he is extraordinarily vague. The evidence therefore suggests that he played no particular role in the organisation since all he would say about his position is that he assisted in spreading the movement and collected donations. What he has said about this must therefore be the summit of his involvement.
>
> 21. I do not therefore accept that he would have been targeted in the way which he describes by the Egyptian authorities. It is worth remembering that the appellant was out of the country during the period when the brotherhood ran the government. He came to the UK in May 2012 using his own passport. He therefore could not have been a supporter of the brotherhood and in particular Mr Morse [sic] when they controlled the country, and when the present government took over. In any event as I have indicated his role was very minor in the organisation. A letter has been produced from the Muslim Brotherhood UK which states that the appellant has been an active supporter member in Egypt and the UK. It was stated that he had joined demonstrations in 2015 and 2018. They stated that he is a wanted activist, and there is no doubt that he would be detained and subjected to torture. I can place little weight on this letter because it is so vague, it does not stipulate what activities the appellant was engaged in in Egypt, and why he is described as an active supporter. The appellant states that he only had attended two demonstrations, there is no reason to suppose that this very low level of activity would have brought him to the attention of the Egyptian authorities, or that they would be able to recognise him on return to Egypt. The background evidence suggests that the authorities would not be interested in a person with his profile.
>
> 22. At the time of his interview the appellant stated that he had been prosecuted but could produce no documentation in support. He has now produced documentation. The original document as translated at page 8 is slightly confusing because it does not set out what offence the appellant has committed. The document refers to the fact that there had been a demonstration by three men who are named outside the Directorate of Security on 14 July 2013. The investigation showed that there were members of a terrorist group and had a relationship with the appellant. The document however does not apparently refer to any conviction against the appellant himself, or explain why the fact that they have association with him is significant, bearing in mind that he had left the country more than one year before the demonstration had taken place. I consider that it is highly significant that the appellant was out of the country at

> the time of all these political activities in Egypt and I do not consider that this document when it is considered in the round can carry much weight. It certainly does not appear to explain his offence. The conviction was said to be on first of October 2016, which is three years after the demonstration which led to the arrest of the three men."

GROUND ONE

12. I deal first with the Medical Report. In very short summary, Dr Hajioff deals with both the mental health problems of the Appellant and some scarring which he claimed arose from an injury suffered during the one demonstration which he had attended in Egypt (in 2011) when police attacked the demonstrators.

13. The only mention of the Medical Report in the Decision is at [17] and [24] which paragraphs read as follows:

> "17. The appellant produced a psychiatric report which suggested that he was suffering from chronic PTSD and has an injury consistent with his account he should receive antidepressant medication. The doctor had observed that there was a scarring on the appellant's knee. He told the doctor that he feels depressed and hopeless but he will never commit suicide because of his Muslim beliefs. The age and appearance of the scar is consistent with the appellant's account.
>
> …
>
> 24. I do not consider that the medical evidence advances the appellant's case. The injury is consistent with his description but a laceration to the knee is a common injury, and it could have occurred in other ways."

14. I did not understand Mr Melvin to disagree that these references do not explain whether and if so what weight has been given by the Judge to the diagnosis of PTSD which is, as Mr Chakmaktian put it, set out uncritically at [17] of the Decision. However, this is an unusual case in that the PTSD is not said to arise from any ill-treatment said to have occurred whilst the Appellant was in Egypt but rather from the Appellant's own fear of return to Egypt. As such, the only reference in the Medical Report to the reasons why the Appellant may be suffering from PTSD is that "[a]s result of, what he sees as, a threat to his life, [AD] is now suffering from chronic post-traumatic stress disorder (PTSD) and has signs of injury consistent with his account". It is to be noted that Dr Hajioff does not actually express a view whether the PTSD diagnosed is likely to have been caused by the fear which the Appellant expresses. However, it is self-evident that the cause attributed to the Appellant's PTSD is based solely on the Appellant's self-reporting as to his fear and it is difficult to see therefore what additional weight could be put on the Medical Report as opposed to the Appellant's own evidence. As such, the Judge was entitled to say, as he does at [24] of the Decision that the medical

evidence does not advance the case. I do not consider that the failure to deal specifically with the PTSD diagnosis amounts to an error of law. There are also some criticisms which could be made of the Medical Report in this regard which were canvassed in oral submissions but, since I have found an error of law to exist for other reasons and the Medical Report will therefore have to be considered afresh by another Judge, I do not need to deal with those.

15. I turn then to the Court Document. The Court Document itself appears at [AB/7]. The first translation of it is at [AB/8]. There is an amended translation which was produced on the day of the hearing. Mr Chakmaktian explained the two main differences which are as follows:

> Original translation:
> "From the schedule of the assizes in case No. [..] for the year 2013 in the assizes Court of […] it turned out to be restricted against [AD] that it is on Friday 14/7/2013 in chamber of […], [KJ], [AM] and [MA] were arrested during a demonstration in front of the directorate of security"
> Amended translation:
> "From the schedule of the assizes in case No. [..] for the year 2013 in the assizes Court of […] it turned out that the case had been registered against [AD] because on Friday 14/7/2013 in chamber of […], [KJ], [AM] and [MA] were arrested during a demonstration in front of the directorate of security"
>
> Original translation:
> "The investigations showed that they were members of a terrorist group, the Muslim Brotherhood, and also at an external level, in contact with aforenamed [AD]…"
> Amended translation:
> "The investigations showed that they were members of a terrorist group, the Muslim Brotherhood, and also have a relationship outside the country with aforenamed [AD]…"

16. I do not accept the Appellant's challenge to the Judge's treatment of the Court Document which is on the basis that the Judge has failed to consider the amended translation at all. I note at the outset that there is no explanation for the different translations carried out by the same translator. There has been no independent check done of either the original or amended translation nor any explanation by the translator himself for the two different interpretations. Those are not necessarily significant differences, but they do change the sense to some degree. However, the Judge does appear to have looked at the amended translation as otherwise he would not have made reference as he does to the investigation showing that the accused persons were in a relationship with the Appellant nor the significance of him being outside Egypt.

17. I also consider that the Judge was entitled to place weight on the lack of any reference to any offence having been committed by the Appellant himself. However, there is one notable omission by reference to the amended translation and that is the failure to note that there is said to have been a case registered against the Appellant in 2013. There is admittedly no explanation of what happened to that case nor confirmation that it led either to any conviction or indeed to any prosecution. It is not said why the case was registered and what the Appellant is said to have done (at a time when he was outside the UK). In and of itself, for those reasons, I would not have found any failure to mention this to be a material error of law. However, when taken with ground two, I have concluded that there is a material error for reasons which I now turn to explain.

GROUND TWO

18. The Appellant's ground two is that there is, as Mr Chakmaktian put it, an error of logic in the Judge's reasoning in particular at [21] and [22], particularly as regards what is said about the Court Document. It is said that the fact that the Appellant was outside Egypt at the time when the case was brought and when the Muslim Brotherhood fell from power has no relevance to the credibility of the claim. What is asserted by the Appellant is that the authorities only became aware of his own support following the arrest of his friend. Thus, what is said to be of significance is the arrest of his friend and his own association with that friend.

19. Whether this is termed an error of logic in the reasoning or a misunderstanding of the Appellant's claim, I am persuaded that the Judge failed to appreciate the fundamentals of the Appellant's case that the risk to him from the authorities presently arises from his association with others who have been arrested, charged and now convicted for support of the Muslim Brotherhood which is considered to be a terrorist organisation. Whether or not the Appellant had an active support or organisational role in that group (which the Judge found he did not) is not relevant to that part of his case which is rather that the Egyptian authorities will perceive him as having such a role because of his association with the persons named in the Court Document.

20. I have carefully considered whether this can be said to be a material error. I have already pointed out the difficulties for the Appellant which arise from the lack of any evidence to explain the two different translations. There are also some peculiarities in the wording of even the amended translation in relation to whether it is the accused persons' association with the Appellant which is said to be of interest or his association with them. There is also, as the Judge rightly observed, no explanation as to the offence said to have been committed by the Appellant nor, as I have already observed, any indication what has happened to the case against him. Those are however matters which need to be considered and weighed in the balance with the other

evidence. In short, therefore, the error which I have identified is a material one. The Judge has failed fully to consider the content of the Court Document (in its amended translation) and as a result has failed to consider the core of the Appellant's fact-specific claimed risk on return.

21. It follows from the foregoing that I am satisfied that the Decision should be set aside so far as concerns the appeal on protection grounds. Although there is no challenge to the Decision on human rights grounds, the hearing before the First-tier Tribunal took place about one year ago and, particularly in light of the mental health problems identified in the Medical Report, it would be appropriate for a second Judge to re-evaluate the position in relation to the human rights claim as at the date of the further hearing. I do not therefore preserve the findings in relation to the appeal on human rights grounds either, notwithstanding the lack of challenge to those findings and the conclusion in that regard.

CONCLUSION

22. For those reasons, I am satisfied that the combination of grounds one and two discloses an error of law as set out above. I therefore set aside the Decision. My decision has identified an error which impacts on the previous Judge's credibility findings as to the Appellant's protection claim. Accordingly, it will be necessary for another Judge to make credibility findings which will be initial ones and will require entirely fresh findings of fact. I therefore consider it appropriate to remit the appeal to the First-tier Tribunal for re-determination. Both parties invited me to take that course if I found an error of law as I have done.

DECISION

I am satisfied that the Decision involves the making of a material error on a point of law. The Decision of First-tier Tribunal Judge D Ross dated 1 October 2019 is set aside. The appeal is remitted to the First-tier Tribunal for re-hearing before a Judge other than Judge Ross.

Signed L K Smith Dated: 16 September 2020
Upper Tribunal Judge Smith