



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07815/2019(P)

THE IMMIGRATION ACTS

Decided Under Rule 34 (P)
On 20 August 2020

Decision & Reasons Promulgated
On 25 August 2020

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

A J K
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation (by way of written submissions)

For the appellant: Manuel Bravo Project

For the respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. This appeal comes before me following the grant of permission to appeal to the respondent by Designated Tribunal Judge Woodcraft on 30 January 2020 against the determination of First-tier Tribunal Judge Ince, promulgated on 23 December 2019 following a hearing at Bradford on 18 November 2019. For convenience, I shall continue to refer to the parties as they were before the First-tier Tribunal.
2. The appellant is a national of Egypt although he had previously claimed on different occasions to be Libyan and Syrian. Although the judge notes that he was born on 27 September 1983, the appellant claimed asylum giving 27

February 1983 as his date of birth (at his screening interview, SEF interview and in representations from his solicitors) He appeals against the decision of the respondent on 2 August 2019 to refuse his claim for asylum. He entered the UK illegally in December 2018 having travelled through Greece (where he spent a year), Albania, Montenegro, Croatia, Slovenia, Italy, France and Belgium, and subsequently claimed asylum.

3. The claim is that in September 2012 he had secretly married a young woman from a wealthy family after his formal proposal had been rejected, that they then cohabited and had three children but that her brothers had been looking for him and that some two weeks before he fled he had returned home to find his wife and children missing. There is some conflict as to whether they had returned to his in-laws or to his own parents. The appellant, however, decided to leave the country.
4. Judge Ince heard evidence from the appellant. Although he placed little weight on the appellant's marriage certificate which gave a different name for him, did not name the bride and gave the appellant's nationality as Syrian, he found that the appellant had married and had experienced problems from his brothers-in-law. He considered the possibility of relocation, found that the appellant's in-laws would not be able to find him on return but concluded that the appellant was depressed and so would have problems finding work in a strange area. Accordingly, he allowed the appeal on asylum and article 3 grounds.
5. The respondent successfully sought permission to appeal. She argued: (i) that the judge's considerations for allowing the appeal were weak, unreasoned, speculative and unsubstantiated and that although he acknowledged that the case was finely balanced had given no reasons for why the balance tipped in favour of the appellant; (ii) that the judge's credibility findings were inadequately reasoned given that the appellant had been untruthful in several respects, that the marriage certificate was unreliable, that the appellant could not even recall what had happened on his wedding day, that he had spent a year working in Greece without claiming asylum and that he had initially claimed that he just wanted to work here like others; (iii) that there was no medical evidence to support the claim that the appellant was suffering from depression, that the appellant himself had confirmed he was not suffering from any illnesses and had worked in Greece for a year and so the conclusion that he could not relocate because he was depressed was made on limited information and for speculative reasons; and (iv) that it was incorrect for the judge to find that the appellant would have no support when he had a wife, children, his parents and brother to assist him.

Covid-19 crisis: preliminary matters

6. The matter would ordinarily have then proceeded to a hearing but due to the Covid-19 pandemic and need to take precautions against its spread, the

hearing of 8 April 2020 was adjourned and directions were sent to the parties on 16 April 2020. They were asked to present any objections to the matter being dealt with on the papers and to make any further submissions on the error of law issue within certain time limits.

7. The Tribunal has received written submissions from the respondent dated 28 April 2020. The appellant filed a Rule 24 response on 17 March 2020 and replied to the directions and submissions of the respondent on 29 April 2020. I now consider whether it is appropriate to determine the matter on the papers.
8. In doing so I have regard to the Tribunal Procedure (Upper Tribunal) Rules 2008 (the UT Rules), the judgment of Osborn v The Parole Board [2013] UKSC 61, the Presidential Guidance Note No 1 2020: Arrangements during the Covid-19 pandemic (PGN) and the Senior President's Pilot Practice Direction (PPD). I have regard to the overriding objective which is defined in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008 as being "*to enable the Upper Tribunal to deal with cases fairly and justly*". To this end I have considered that dealing with a case fairly and justly includes: dealing with it in ways that are proportionate to the importance of the case, the complexity of the issues, etc; avoiding unnecessary formality and seeking flexibility in the proceedings; ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; using any special expertise of the Upper Tribunal effectively; and avoiding delay, so far as compatible with proper consideration of the issues (Rule 2(2) UT rules and PGN:5).
9. I have had careful regard to the submissions made and to all the evidence before me before deciding how to proceed. I take the view that a full account of the facts are set out in those papers, that the arguments for and against the appellant have been clearly set out and that the issues to be decided are uncomplicated. There are no matters arising from the papers which would require clarification and so an oral hearing would not be needed for that purpose. I have regard to the importance of the matter to the appellant and consider that a speedy determination of this matter is in his best interests. I am satisfied that neither party has raised any objection to the matter being determined on the papers although they have had ample opportunity to do so. I am satisfied that I am able to fairly and justly deal with this matter in that way and now proceed to do so.

Submissions

10. On 17 March 2020, the appellant submitted a Rule 24 response to the respondent's grounds and I take that into account. The appellant complains that the respondent's application was made out of time and that the issue of timeliness was not addressed. He asks that the appeal be struck out on that basis.

11. As to the grounds, the appellant submits that they are a fishing expedition that disagree with the judge's findings and introduce new arguments not pursued at the hearing. It is submitted that it is not correct to maintain that the judge found there was no risk from the appellant's family¹ because he expressly found that there was but that they did not have the resources to trace him.
12. It is submitted that contrary to the contention that the judge did not have regard to the discrepancies in the marriage certificate, the judge had dealt with this issue and found that they did not weigh strongly against the appellant. It is submitted that several discrepancies were given little weight by the judge because of the mishandling of the substantive interview by the respondent. It is maintained that the judge was mindful that an appellant might lie about some aspects of his account but be truthful about others. It is submitted that the appellant had not forgotten what had happened on his wedding day; he just had difficulty remembering the date. It is submitted that the judge found the appellant to be truthful and that the consistency and plausibility of his core account were relevant factors in that assessment. It is submitted that contrary to what the grounds argue, section 8 factors were addressed by the judge at paragraph 16.
13. It is submitted that the grounds show a misunderstanding of the test on internal relocation. The judge found that the appellant would not be located on return but, nevertheless, he found relocation to be unreasonable because of the appellant's mental health difficulties. There was sufficient evidence for the judge to reach the conclusions he did. It is submitted that it is incorrect to assert that the judge found there was familial support for the appellant on return.
14. It is submitted that points are re-argued because of disagreement and not because of any established error. The Tribunal is invited to dismiss the respondent's appeal.
15. On 28 April 2020, Mr Avery on behalf of the respondent responded to the Tribunal's directions confirming that reliance was placed on the extensive grounds of appeal already submitted and that the respondent had nothing further to add. There was no engagement with the rule 24 reply from the appellant and it is not clear whether the respondent has had sight of that.
16. On 29 April 2020 the appellant wrote in response to the respondent's submissions although, given that he is not the party who brought the challenge, he had no right to have the last word. In any event, the reply simply maintains reliance on the previous submissions and repeats the issue of timeliness.

¹

Presumably the appellant's representatives meant here to refer to the appellant's wife's family.

Discussion and conclusions

17. I have considered all the evidence, the grounds for permission and the submissions made by both parties.
18. I consider first the appellant's complaint that the respondent's permission application was made out of time. The determination was sent out on 23 December 2019 and the deemed date of delivery would normally have been 25 December however taking into account the bank holidays over the Christmas and new year period, there has not been the seven day delay that the appellant complains of. Judge Woodcraft did not consider timeliness to be an issue when he granted permission and the Tribunal file does not mark the application as having been received late. In the circumstances, I treat the application as having been made in time.
19. I turn now to the respondent's grounds. The judge's findings are criticised for being speculative, weak, unreasoned and unsubstantiated against the evidence. Details are given and I now deal with the credibility assessment.
20. Despite having found that the appellant had lied about his name and nationality (at 22), that he had claimed at his screening interview that he had come here for economic reasons because his parents and son were unwell and he did not have the income to look after them (at 23), that despite being specifically asked whether he had had any problems in Egypt he answered in the negative (at 4.1 of the interview), only later adding through his representatives that his life was at risk (at 24), that a different name (A G A A A K), date of birth (27 September 1983) and nationality (Syrian) were given for the groom on the marriage certificate, that little weight could be given to the certificate of which only a copy had been provided, that he could not recall any details of what happened on his wedding day (at 50) ², that the evidence about the marriage was finely balanced (at 51), the judge found that because of the lower standard he was led to the conclusion that the appellant had told the truth about his marriage (at 51). The respondent is right to complain that no adequate reasons have been given for why the judge concluded that the balance tipped in favour of the appellant on this issue. Similarly, in finding that the appellant's in-laws were still interested in him several years after the marriage and after the birth of three children, the judge found that "*as I have accepted his account of being married to M, it follows that I can take his honesty about part of his account into consideration*" (at 52). Once again, there is an inadequacy of reasoning.

²

The judge did not just find that the appellant could not recall the date of the wedding as argued in the appellant's Rule 24 reply at paragraph 15.

21. It should be noted that the appellant also lied about whether or not he knew anyone in the UK³ and that although the judge found his deception about being Syrian was not maintained for a prolonged period, he had given a false name, false date of birth and details of a bogus claim to the immigration authorities upon arrival, claiming that he was from Aleppo and that his house had been destroyed in the war, had not claimed asylum in France or Belgium or any of the other countries he travelled through and only claimed asylum here after he had been apprehended.
22. Whilst consistency in a claim is a relevant factor as the appellant maintains in his submissions, it is not the only factor and must be considered along with all the other evidence. The appellant may well have been consistent in his claim that he got married without the approval of his wife's family but there were many other matters to be taken into account which impacted upon his integrity and a proper assessment was not carried out notwithstanding the contents of paragraph 48. The errors arising from the findings on the marriage spill over onto the judge's other findings including the issues of risk on return and internal relocation.
23. On the matter of the appellant's depression, the judge relied on the appellant's account of poor memory loss and drowsiness as a result of anti-depressants he said he took but there was no medical evidence to support the diagnosis of depression or any professional prognosis. Without such evidence, it was speculative for the judge to conclude that the appellant required medication and/or would continue to require it long term/on return to Egypt. Moreover, the appellant's ability to travel the UK via numerous foreign countries over a prolonged period of time and to have managed to work and support himself during that time when he did not know the language and had no support were matters not taken into account when assessing whether it would be reasonable to expect him to relocate to "a strange area" of Egypt, assuming that return to his home area was unsafe.
24. It follows that the judge's findings are unsustainable and I set aside the decision in its entirety.

Decision

25. The decision of the First-tier Tribunal contains errors of law and it is set aside. No findings are preserved. The matter is remitted to the First-tier Tribunal for re-hearing by a judge other than Judge Ince. Directions for the hearing shall be issued by the First-tier Tribunal in due course.

Anonymity

³

He told the IO on arrival that he knew no one here, at his screening interview he claimed to have cousins here and at his SEF interview he maintained he had no relatives.

26. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I continue the anonymity order made by the First-tier Tribunal judge.
27. Unless the Upper Tribunal or a court directs otherwise, no reports of these proceedings of any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant from the content of the claim.

Signed

R. Kekić

Upper Tribunal Judge

Date: 20 August 2020

