



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2022-004662  
First-tier Tribunal Nos:  
PA/52905/2020  
IA/02883/2021

**THE IMMIGRATION ACTS**

Decision & Reasons Issued:  
On the 18 May 2023

Before

**UPPER TRIBUNAL JUDGE OWENS**

Between

**MAB**  
**(ANONYMITY ORDER MADE)**

Appellant

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Schymyck, Counsel instructed by Duncan Lewis Solicitors  
For the Respondent: Mr N Wain, Senior Home Office Presenting Officer

**Heard at Field House on 21 April 2023**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. The appellant is a citizen of Egypt, born on 1 June 2001. He appeals with permission against the decision of First-tier Tribunal Judge Abdar (“the judge”) who on 11 May 2022 dismissed his appeal against the decision dated 1 December 2020 to refuse his protection and human rights claim.

### **First-tier Tribunal Decision**

2. The judge’s starting point in this appeal were the findings made in a decision by First-tier Tribunal Judge Moxon (“Judge Moxon”) in a previous decision dated 2016 in accordance with Devaseelan [2002] UKIAT 702. Judge Moxon dismissed the appeal finding the appellant to be lacking in credibility. The appellant did not give evidence in front of Judge Moxon because of his young age at the date of that hearing. Although Judge Moxon noted that the respondent accepted that the appellant had started working at the age of 6 and had left Egypt at the age of 12, arriving in the United Kingdom at the age of 13, he rejected the appellant’s account of having been subjected to domestic violence by his father. Judge Moxon also noted that the respondent additionally accepted that the appellant had been injured during an attack on his village by the Muslim Brotherhood, and he did not make any adverse credibility findings against the appellant because of his failure to claim asylum in France or his failure to claim asylum promptly in the United Kingdom because of his young age on arrival.
3. The judge considered the further evidence before him noting that the core issue in the appeal is the appellant’s credibility particularly in respect of the relationship between the appellant and his father. The judge accepted the evidence of the appellant’s personal advisor and in particular placed weight on communications between the personal advisor and the appellant’s then foster carer. The judge accepted the appellant’s evidence that his mother and sister had passed away in 2016 and 2018 respectively. The judge then turned to consider the additional supporting evidence which included a psychological report by Dr Lissa Morrish and a country expert report by Dr E G H Joffe. The judge was not persuaded to depart from Judge Moxon’s findings a) that the appellant had not been abused by his father in Egypt; and b) that the appellant’s departure from Egypt was funded by the appellant’s father and not by his mother as claimed. The judge found that the appellant did not have a subjective fear of being harmed by his father on return to Egypt. The judge dismissed the asylum, humanitarian protection and human rights appeal.

### **Grounds of Appeal**

Ground 1. The judge’s approach to the medical evidence was flawed. The judge erroneously rejected the reliability of the expert’s psychiatric report on the basis of previous negative credibility findings.

Ground 2. The judge failed to provide adequate reasons why he rejected the conclusions of the country expert.

Ground 3. The judge applied an inappropriately high standard of proof when deciding whether to depart from the findings in the earlier determination.

### **Rule 24 Response**

4. The respondent submitted a brief Rule 24 response opposing the appeal and submitting that the First-tier Tribunal Judge had directed himself appropriately.

## Ground 1

5. The appellant's evidence is that he is traumatised as a result of significant and frequent domestic violence by his father from the age of 8 until the age of 12, and secondly because during his journey to the United Kingdom he travelled from Egypt to Italy in an overcrowded boat during which time he thought he was going to die.
6. Mr Schymyck submitted that at [30] the judge has made a classic error in line with Mibanga v Secretary of State for the Home Department [2005] EWCA Civ 367. Instead of considering the report holistically in the round with the remainder of the evidence, the judge started by focusing on Judge Moxon's negative credibility findings.
7. Mr Wain submitted that the judge's consideration of the expert report was lawful and appropriate. He pointed to authorities that state that where expert evidence is adduced the expert must be scrupulous in dealing with a previous judge's findings. The judge was entitled to take into account that there was no reference to Judge Moxon's findings in the report. It was open to the judge to find that the psychological report was flawed because the expert had accepted the appellant's evidence at its highest. He submitted that it was plain that the judge had considered the substance of the report and looked at it holistically in the round concluding that there was nothing in it to depart from and dislodge the previous findings.
8. I am in agreement with Mr Schymyck. There was before the judge a long, detailed report by Dr Lissa Morrish, a clinical psychologist. There was no dispute given her extensive CV that she was appropriately qualified to examine the appellant. Dr Morrish was instructed to assess the appellant's health and psychological symptoms and to address the likely cause of any such conditions. She was also instructed to comment on whether in her professional opinion the symptoms were genuine.
9. The expert had before her evidence including the respondent's refusal decision as well as Judge Moxon's determination. The expert spent two and a half hours evaluating the appellant using clinical interviews as well as psychological tests including the PTSD Checklist for DSM-5, Beck Anxiety Inventory and the Beck Depression Inventory.
10. The appellant reported feeling distressed about memories of his past, having nightmares, becoming stressed when he sees scars on his body, and having physical reactions so that his heart pounds and he finds it difficult to breathe when he thinks about the domestic violence he experienced. He also reported trying hard to avoid these memories and distressing thoughts about his experiences in Egypt as well as his memories of his journey to the United Kingdom. He reported avoiding any media coverage about domestic violence or migrant boat crossings. The appellant reported feeling negative most of the time, having diminished interest in social activities, feeling moderately detached from others, feeling sad most of the time and intense anger towards his father, watchful and on guard, jumpy and easily startled and having considerable problems with sleep. In summary the appellant experienced psychological

distress and physiological reactions to internal and external cues which symbolise or resemble aspects of traumatic events.

11. Dr Morrish set out her diagnosis at 4.1 where she stated:

“It is my opinion that Mr B is suffering from severe anxiety, severe depression and Post-Traumatic Stress Disorder (PTSD). He continues to be profoundly emotionally impacted by the abuse he suffered as a child at the hands of his father. He also experiences a number of distressing post-traumatic symptoms as a result of the memories about the traumatic events he experienced as a child and on his journey to the United Kingdom. The ongoing uncertainty about his future creates significant anxiety and his grief at the loss of both his mother and sister, with whom he had positive relationships, creates depressive symptomology”.

12. She concluded:

“Mr B’s account of the traumatic incidents in his past and the effects that they have had on him was consistent, coherent and congruent with his emotions observed by me in the assessment. I conclude that there was no indication in this assessment of malingering, the intentional production of false, or grossly exaggerated physical or psychological symptoms, motivated by external incentives. My work as a Clinical Psychologist over more than 25 years with people who experience varying degrees of trauma and psychological disorders puts me in a strong position to make a valid assessment of the manner in which Mr B presented throughout this assessment and his responses to psychometric testing. He was under close scrutiny for the duration of the two and a half hour assessment. Mr B’s report of the events of his past and since his arrival in the United Kingdom were completely consistent throughout this assessment and with the information provided to me by his solicitor. I also observed that his behaviour was entirely congruent with the emotions he described. He became visibly upset at times, e.g. when talking about the deaths of his mother and sister, and at other points in the assessment, e.g. when encouraged to talk about his father in greater detail, he became agitated, his rate of speech increased and he became fidgety, finding it hard to sit still. It is my conclusion that he experienced a number of intrusive symptoms of PTSD at this point, triggered by memories of the abuse he suffered. Mr B’s experiences of violence in his childhood is, in my clinical opinion, the primary cause of his current struggles with PTSD”.

13. As Mr Schymyck submitted this was a strong psychological report, notwithstanding the judge’s failure to directly address the previous judge’s negative credibility findings.
14. I note firstly that the expert was not expressly instructed to deal with those negative credibility findings but was asked to carry out an assessment of the appellant, diagnose his mental health and to consider the causes of it from her clinical expertise and also to comment on whether the symptoms could be categorised as malingering or fraudulent.
15. The judge dealt with this report in two very brief paragraphs. At [29] the judge stated:

“Dr Morrish is a private Clinical Psychologist and I find Dr Morrish to be a suitably qualified expert. Dr Morrish diagnosed the Appellant with ‘severe anxiety, severe depression and Post-Traumatic Stress Disorder’”.

16. The judge then went on at [30]:

“At paragraph 2.4, Dr Morrish states ‘there was no discrepancy between Mr B’s account in this assessment and the background paperwork that has been provided by his solicitors’. Respectfully, I disagree with Dr Morrish’s statement and even though Dr Morrish had sight of FtTJ Moxon’s decision, there is no reference to the findings in the report, including FtTJ Moxon’s findings of inconsistencies in the Appellant’s evidence. Contrary to FtTJ Moxon, Dr Morrish wholeheartedly accepted the Appellant’s account, which, in my view, makes Dr Morrish’s report unreliable”.

17. This is the entirety of the consideration of this medical report. The judge has clearly provided one reason for rejecting the conclusion of the report but there is in my view a complete failure to engage holistically with the substance of the report, alongside the remainder of the evidence.

18. At the earlier appeal the appellant was 15 years old. He did not give oral evidence, so his evidence was not subject to cross-examination. Judge Moxon as I have stated above, noted that the respondent accepted that the appellant had worked from a young age and was attacked by the Muslim Brotherhood and did not apply s8 considerations to him. Judge Moxon also took into account that the appellant had mental health problems. The primary reasons Judge Moxon gave for finding the appellant to be lacking in credibility was that on arrival, at the age of 13, he had initially claimed to be Syrian rather than Egyptian, and secondly because there was an inconsistency in his evidence about who arranged his journey to the United Kingdom. The appellant had initially stated it was his father and then in his appeal statement said that this was not true, and it was actually his mother who had arranged for and paid for the journey together with some of his own earnings from his employment. His evidence was that he did not disclose this earlier because he did not want to get his mother into trouble. Finally Judge Moxon found that the medical evidence before him did not sufficiently persuade him that the appellant’s mental health was attributable to the previous domestic violence.

19. The appellant has provided the medical evidence specifically to address the lacuna in the evidence before Judge Moxon. The judge has simply rejected the entirety of the medical report on the basis that it does not address Judge Moxon’s previous negativity findings. The judge has manifestly not approached the medical report with an open mind. I am in agreement that this is a classic Mibanga error. There is nothing in the decision to indicate that the judge has looked at the powerful clinical findings that would point to the appellant’s account of being the victim of longstanding domestic violence to be credible. Dr Morrish provided a detailed explanation of why she believed the appellant’s account to be true, which I have set out above. It is not the case that she uncritically accepted the appellant’s account. She explained and rejected the possibility that the appellant was malingering at paragraph 5.1, explained that her view was based on over 25 years of experience, and two hours and 30 minutes of scrutiny and at 5.2 and linked the PTSD symptoms observed during the assessment to specific events which are in dispute in the proceedings. She provided a detailed analysis of the connection between the symptoms as displayed in the consultation and the appellant’s account of experiencing

violence during childhood. She also acknowledged the role of other difficult life events as contributory causes to the appellant's PTSD. The judge in my view wrongly discounted the reliability of this expert report based on his prior view of the appellant's credibility and if he had not made this error the opinion presented by Dr Morrish and the other evidence relied upon by the appellant may have persuaded the judge to depart from the findings in the previous decision. Ground 1 is made out.

## **Ground 2**

20. Dr Joffe provided extensive expert evidence to the Tribunal. This was acknowledged at [32]. Dr Joffe's report is very long and sets out at length general background material about events in Egypt, before discussing the availability of protection from the authorities and the possibility of internal relocation.
21. Importantly, Dr Joffe's opinion is that the appellant's account of being the victim of domestic violence as a child was "highly plausible". He states:

"I should, perhaps, confirm first that, unlike the Secretary of State and the Immigration Judge who considered his original appeal, I find his claim to be highly plausible, although there are minor inconsistencies in the various accounts that he has given and in the interpretations of them by the Secretary of State and the Immigration Judge, as I outlined above. Domestic physical abuse of women and children is extremely widespread in Egypt and is socially widely tolerated with up to 93 per cent of children habitually subjected to domestic physical abuse".
22. The expert also commented that the appellant's mother may well have had access to her dowry which she could have used to raise money to assist to pay for the appellant's journey.
23. The judge's treatment of Dr Joffe's report is in one paragraph at [32] which states as follows:

"The Appellant has also adduced an expert report by Dr E G H Joffe, dated 14 August 2021. Dr Joffe's expertise is not in doubt and the Respondent has not challenged the report. However, I agree with the Respondent that the majority of Dr Joffe's report, particularly paragraphs 27 to 102, 'is very general in its nature and spans a large time period giving a modern-day history of Egypt'. Dr Joffe also opines that the Appellant's account of abuse by his father is highly plausible, particularly in the light of the prevalence of domestic and child abuse in Egypt".
24. The judge goes on to find that he does not depart from Judge Moxon's findings.
25. Mr Wain was unable to explain to me if the judge had rejected the expert opinion and if so what reasons he had given for rejecting the expert's opinion, firstly that the account was highly plausible because of the prevalence of domestic violence, and secondly that it was plausible that the appellant's mother had raised some funds through her dowry. Mr Wain was only able to point that to the fact that the judge had referred to the "general nature of the background evidence".

26. My view is that the judge has failed to make any real findings on the contents of the report and has failed to provide adequate reasons why the expert opinion of the plausibility of the domestic violence along with the other evidence was insufficient to depart from the earlier findings.
27. The task of the judge was to put the expert's view of the plausibility of the appellant's evidence in the round with the new psychological evidence and any other evidence taking into account the appellant's age on his arrival and his explanations for any discrepancies now that he was old enough to give oral evidence. The judge has failed to do this because he treats each element separately rather than holistically. I am satisfied that the judge's approach to this evidence is flawed.

### **Ground 3**

28. At the judge states "plausibility, albeit high plausibility, is not a high threshold to overcome and it does not without more dislodge the Tribunal's erstwhile findings of fact".
29. I am also in agreement that this wording also demonstrates the judge's erroneous approach. Mr Wain acknowledged that the use of the word "dislodge" is unhelpful but submitted that when the decision is read as a whole the judge had properly looked at all of the new evidence holistically applying the correct standard of proof and found that the further evidence was no more than a disagreement with Judge Moxon's reasoned findings.
30. In my view it is highly significant that the expert found the appellant's account to be highly plausible and the judge should have assessed this fresh evidence on the lower standard of proof holistically with the remainder of the evidence. He has not done so. He has not carried out a holistic assessment.
31. I am satisfied that the judge's approach was flawed. All three grounds are made out.

### **Materiality**

32. I questioned Mr Schymyck about the materiality of this error given that the risk of serious harm is said to be at the hands of a third party and not the Egyptian authorities. Even if the appellant is found to be credible, there remain the issues of sufficiency of protection and internal relocation. In this respect, I note that neither Judge Moxon or Judge Abdar addressed these important issues and neither judge has made findings on them. The result is that if the appellant were to be found credible these issues would need to be addressed. In respect of internal relocation, the appellant's mental health difficulties, the length of time he has spent in the United Kingdom and the age at which he has come here would be relevant considerations. These considerations would also be relevant to the Article 8 ECHR assessment, both under the Rules and in respect of the wider proportionality balancing exercise. I am persuaded that it cannot be said that there is only one outcome to the appeal. I am therefore satisfied that the errors are material. The decision is therefore set aside in its entirety.

### **Disposal**

33. Mr Schymyck submitted that due to the extent of the findings that would need to be made and out of fairness to the appellant that the appeal should be

remitted to the First-tier Tribunal. Mr Wain was neutral on this issue. I am of the view that it is appropriate to remit this appeal to the First-tier Tribunal because of the extent of the findings which need to be made and because the appellant is a vulnerable witness and it would be unfair to deprive him of the opportunity of an onward appeal.

### **Notice of Decision**

34. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
35. The appeal is set aside in its entirety with no findings preserved.
36. The appeal is remitted to the First-tier Tribunal to be heard de novo by a judge other than Judge Abdar and Judge Moxon.

**R J Owens**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

17 May 2023