



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005311
First-tier Tribunal Nos: PA/55411/2021
IA/16353/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
18 August 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE SHEPHERD

Between

AK (EGYPT)
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Hussain, Counsel, Garden Court North Chambers
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 27 July 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

Background

1. This matter concerns an appeal against the Respondent's decision letter of 5 November 2021, refusing the Appellant's asylum and protection claim initially made on 24 June 2020.
2. The Appellant's claim is on the basis of a fear that he will be killed by the Egyptian army or government because he escaped from military service and left the country illegally.
3. The Respondent accepted the Appellant's nationality but refused his claim due to alleged inconsistencies and speculation in his account. The Respondent specifically rejected the Appellant's claim to have been called up for a second period of military service and to have subsequently deserted.
4. The Appellant appealed the refusal decision.
5. His appeal was heard by First-tier Tribunal Judge Austin ("the Judge") at Manchester on 1 September 2022, who later dismissed the appeal in its entirety in a decision promulgated on 26 September 2022. I note the Respondent was not represented at the hearing but the Appellant was represented and also had the assistance of an Arabic (North African) interpreter.
6. The Appellant applied for permission to appeal to this Tribunal on three grounds as follows:

Ground 1 - Failure to consider all relevant evidence

It was accepted that the Appellant is Egyptian and that he served in the Egyptian Army for the period of his Military Service from 2016-2018 [27]. It was not accepted that the Appellant was recalled to serve a second period in the Egyptian Army for the following reasons in [28]:

"I have considered the claim to have been recalled a second time and I reject it. I find that he has not provided any documentation to substantiate his claim that he was recalled for military service soon after ending his first period. It appears to me that it is reasonable to expect that there would be some documentary evidence available to him to show that he had served and been recalled for a second time which details that military service and the avoidance of it has recorded and detailed consequences for the person concerned".

The Appellant did provide evidence to the Tribunal in the form of: (i) Statement of Military Service Period/Mobilisation Code B484 and (ii) Ministry of Defence Certificate of Military Service in Egypt Armed Forces issued on 01/05/2018. (The Appellant confirms that the Respondent did not see these documents prior to the Refusal Letter.)

These documents were not referenced by the Judge in his determination. They are relevant because document (i) confirms the Appellant remains a member of the reserve forces and document (ii) confirms he was transferred to the Reserve Forces and this will not end until 01/05/2027. If the Appellant was a member of the Reserve Forces until 01/05/2027 then it was more likely than not that he would be have been recalled to the Egyptian Army as per his evidence. There was also a report by HRW which detailed the conflict in North Sinai where the Appellant was posted in his second conscription.

None of this was dealt with by the Judge in his decision; the findings at [27] are arguably erroneous and infect the rest of the decision.

Ground 2 - Departure from Egypt

The Judge finds at [28] that the Appellant could not have left Egypt if he had deserted his post. He does so based on the background country information yet fails to identify any relevant extracts:

“The ability to travel is restricted for example. Further the ability to work is severely restricted if a person is unable to show that they have completed their appropriate period or periods of military service. The appellant states that he left Egypt at the end of July 2019 by plane using his own passport. I find that this is inconsistent with the background evidence that suggests the person who is serving in the army is likely limited in their movement. Secondly the reason which I find this lacks credibility is that the appellant claims that he was a deserter from the army who had not long before left his post clandestinely by escaping from a remote camp. I do not find it credible that he would have been able to do this with ease with which he claims. He was of military service age at the time that he travelled out of Egypt by plane on his own passport and yet he did not experience any difficulties in showing that he had completed military service and had a military exemption certificate as required. I find this undermines his credibility”.

The Country Background Note, Egypt, 2020, states:

“15.2.2 The same source noted that not all people with charges against their names (or trials or appeals pending) are automatically put on the warning list and it is up to the Prosecutor-General to add their names. It is possible for names to be taken off the list, even if trials are pending. Should a person’s lawyer request a name be taken off the list, it is the responsibility of the Prosecutor-General to show why the name should remain on it. There have been numerous cases where a person facing trial has had his or her name removed from the list, and subsequently travelled abroad without incident”.

The Judge’s reasoning is inadequate and the paucity of findings is challengeable.

Ground 3 - Failure to consider risk on return Article 2/3 breach

The Judge finds that the Appellant has not made out his case to be at risk of persecution at [30]. It is correct that the Appellant is at risk of prosecution if he is returned to Egypt however, it then becomes a question for the Judge if any pre-trial or post-trial detention would breach the Appellant’s Article 2/3 ECHR rights.

At [31] the Judge finds that no period in detention would amount to persecution or a breach of Article 2/3 ECHR. It is respectfully submitted that the Judge’s reasoning is lacking and unsafe.

The Home Office: Country Background Report, Egypt, v.1.0 December 2020, (which has been updated by the Home Office in the summer of 2022) states:

“14.9 Prison conditions

14.9.1 Amnesty International (AI), in their review of events in 2019 noted:

Torture remained rife in formal and informal places of detention...Overcrowded and unhygienic cells, lack of ventilation, prolonged solitary confinement and denial of family visits contributed to inhumane conditions of detention across the country

While the USSD human rights report for 2019 observed:

Conditions in prisons and detention centers were harsh and potentially life threatening due to overcrowding, physical abuse, inadequate medical care, poor infrastructure, and poor ventilation...The large number of arrests and the use of pretrial detention during the year exacerbated harsh conditions and overcrowding, contributing to a significant number of deaths in prison and detention centers

14.9.2 Freedom House in its report of events in 2019 similarly noted: Prison conditions are very poor; inmates are subject to physical abuse, overcrowding, a lack of sanitation, and denial of medical care.

14.9.3 For further information on prison conditions, see: US Department of State Country Report on Human Rights Practices, Section 1, Prison and Detention Centre Conditions HRW, Egypt: Apparent Covid-19 Outbreaks in Prisons and World Prison Brief, Egypt. And Country Policy and Information Note, Opposition to State, Section 4.4, Conditions in Detention”

The Judge has therefore failed to offer adequate reasoning for rejecting the appeal on the basis of Articles 2/3 ECHR.

7. Permission to appeal was granted by First-tier Tribunal Judge Athwal on 13 November 2022, stating:

“1. The application is in time.

2. The grounds assert that the Judge erred by failing to consider the documentary evidence of Appellant’s re-call to military service; incorrectly found that the Appellant would have been unable to leave Egypt as claimed; provided inadequate reasons for rejecting the Human Rights claim.

3. If as claimed the Appellant did provide documentary evidence of his second recall to military service, then the Judge’s finding that no such evidence was submitted is incorrect. This raises an arguable error of law.

4. The other grounds also raise arguable errors of law”.

8. No response was filed by the Respondent.

The Hearing

9. The matter came before me for hearing on 27 July 2023.

10. It serves no purpose to recite the submissions in full here as they are a matter of record. I shall only set out the main points as follows.

11. Mr Hussain said all grounds were maintained and took me through them. He took me to the two documents and the report from HRW referred to in ground 1. Both Mr Hussain and Mr Diwnycz concurred that the military documents were not before the Respondent at any point prior to the appeal bundle before the Judge.

12. Mr Hussain said that overall, the Judge made incorrect factual findings, but also failed to properly assess the risk on return in the context of the Appellant having left illegally whilst subject to military service; this is important as the Appellant

faces imprisonment on return and the conditions are life threatening, as shown by country evidence before the Judge. He asked that the Judge's decision be set aside and the matter be referred back to the First-tier Tribunal for a de novo hearing on all issues.

13. Mr Diwnycz apologised for the lack of a rule 24 response. As regards ground 1 and [28] of the Judge's decision, he said the Appellant had provided evidence of conscription and service but no papers to show a second call up; the Respondent conceded that the Appellant remained in the reserve forces after his first period of service but did not accept he was called up a second time due to the lack of written or other evidence. He said a call up could be by an announcement on the radio to everyone, or an individual letter through the post; we simply have nothing to show what it was; the Judge found the Appellant left using his own papers which would be difficult to do if he was called up and owed service. He said whether there was a failure to address prison conditions stands or falls with the findings in [28]; he confirmed this would be a material error if an error in [28] is made out.
14. In reply, Mr Hussain sought to rely on the first extract in the 'Key Passages Index' document (containing passages taken from the Respondent's CPINs) which stated as follows:

"Current requirements for adult passport applicants include a valid national identity card and four photographs. Male adults (except those born prior to March 1941) additionally require proof of completion of military service, a military service exemption certificate, an expired passport with a recorded exemption from military service or a permission to travel obtained from the Conscription Department".
15. I asked what the relevant paragraph number was as it was not stated in the index and Mr Hussain was unable to take me to it. It was agreed by all that he could send the correct citation by email after the hearing. I have since received the promised email and it confirms that the citation is from 10.1.1 of the Country Background Note Egypt which cites a 2019 DFAT Report; this CPIN was no longer accessible on GOV.UK website but formed part of the Appellant's bundle before the Judge.

Discussion and Findings

16. Having set out the correct standard of proof and applicable law at [5] - [11], the Judge says at [12] that in reaching his decision, he has had regard to all of the evidence submitted to him. At [13] he refers to the correct case of Tanveer Ahmed (2002) UKIAT 00439 applicable to assessing documentary evidence. At [17] - [19] he succinctly summarises each party's position and the issues in dispute. At [22] he notes the absence of the Respondent at the hearing and at [23] states that, although he has been selective in the references made to the evidence, he has nonetheless considered it all in the round when reaching his conclusions.
17. Relevant to ground 1 is whether that evidence included the 'Statement of Military Service Period/Mobilisation Code B484' and 'Ministry of Defence Certificate of Military Service in Egypt Armed Forces issued on 01/05/2018', as well as the 'report by HRW'. As was confirmed before me, these documents were not before the Respondent prior to the appeal bundle; they had therefore not been addressed in either the Refusal Letter or the Respondent's later review. I

note para 4 of the Appellant's brief skeleton argument (ASA) before the Judge stated that (with my emphasis in bold):

"The Appellant has provided a cogent account of his time in the Egyptian military and where he has been able to, **he has provided independent evidence to support his claim. This evidence is in the form of a Military Identity Card (which is in Arabic but has been translated into English) as well as photographs of him** in his military uniform in Egypt. Further he has **provided clear and cogent response to the points taken in the RFRL in his most recent witness statement.** The Respondent also doesn't challenge most of the Appellant's evidence and even goes as far as accepting his evidence is both internally consistent (RFRL, paras. 56-57, 59, 61) and consistent with external evidence (RFRL, paras. 58, 62)".

18. I note para 2 of the Appellant's witness statement dated 11 April 2022 refers to the Appellant having received a "call up letter to return to Military Service on 02/05/2019" after which he went to report at a distribution office on 12/05/2019. Para 6 states that:

"The Home Office do not accept that I was conscripted for second time. Unfortunately I have no proof of that time because my telephone was confiscated when I went back to the army for a second time...I have been trying to obtain the documents to prove that I was called to military service for the second time but in order to get these documents we would need to pay a significant bribe which neither I nor my family have".

19. Para 7 states that:

"When I first reported the distribution office in May 2019 I had to hand over my letter and then they handed me another letter which I no longer have because I had to hand that over to the Unit where I was serving".

20. Para 11 repeats that he had to hand the letter over along with his ID and army certificate. At para 10 he states:

"In response to paragraph 54, I didn't have a solicitor before now and as such I didn't get a chance to submit the evidence I have. I am very upset about this but I have this evidence now and my solicitor has had this evidence translated from Arabic to English. I am sorry that this evidence was not advanced previously and at the time of the interview I was not asked for these photographs".

21. At para 15 he says:

"If you look at the Military ID I have presented, they have the right to re-call me to service until 2027 when I will be 30 years old".

22. In his earlier witness statement of 22 September 2021, the Appellant stated at para 16 that:

"I have photographs of me in my uniform in the army in [sic] and I have a paper/certificate to prove my conscription. I can request this from Egypt. It will show I have completed Compulsory Military Service in Egypt in May 2018. I have never had a solicitor so I have not had the chance to present this evidence or translation(s)".

23. I note the document at page 11 of the Appellant's bundle is the translated 'Statement of Military Service Period/Mobilisation Code B484' which states a date of completion of 1.05.2018 and also says "Status of service in reserve forces: still a member of reserve forces". Under the heading 'Instructions', it states that someone can be called up if they are a member of the reserved forces. The

document at page 12 is the translated 'Ministry of Defence Certificate of Military Service in Egypt Armed Forces issued on 01/05/2018' which confirms the Appellant had completed his military service with the 'Air Defense Forces' on 1 May 2018 and that "Since he was transferred to the Reserve Forces, his service as a reserve ends on" 1 May 2027. These documents are followed by copies of the originals, and then by various photographs of the Appellant in uniform.

24. The Refusal Letter at para 59 accepted that the Egyptian government was entitled to ask the Appellant to rejoin the military until he was 30 years old. It was whether the government actually had so asked him that was in issue.
25. It does not appear to me that the Judge's attention was specifically drawn by the ASA or the Appellant's witness statements to the documents now said to be those relied on by the Appellant going to his second period of service. The Judge's decision does not describe the submissions made at the hearing but it has not been said before me that they so drew his attention either. Rather, the ASA and witness statements indicate that the only pieces of evidence the Appellant had which went towards his second call up were his military ID and photographs. It is therefore not clear to me that the Appellant was in fact relying on the documents now being cited to me as showing he had been called up a second time.
26. What is clear is that the documents did form part of the Appellant's bundle. I cannot see that these documents are mentioned specifically in the Judge's decision but, as above, he confirms he had considered all the evidence despite being selective in his references to it.
27. The Judge finds at [28] that:

"I have considered the appellant's claim to have been recalled for military service for a second time and I reject it. I find that he has not provided any documentation to substantiate his claim that he was recalled for military service soon after ending his first period. It appears to me that it is reasonable to expect that there would be some documentary evidence available to him to show that he had served and been recalled for a second time which details that military service and the avoidance of it has recorded and detailed consequences for the person concerned. The ability to travel is restricted for example. Further the ability to work is severely restricted if a person is unable to show that they have completed their appropriate period or periods of military service".
28. Against the background of the evidence as detailed above, I find the Judge's findings in this paragraph were open to him. He is not saying the Appellant had provided no documentation at all, but that the Appellant had provided no documentation going to his claim of being called up a second time. It is correct that the Appellant had not provided any documentation confirming his second recall. He admitted as much in his witness statements, saying he had to hand over the relevant letters when he attended the distribution centre. Rather, the evidence provided by the Appellant showed that he had already served his first period of compulsory service and remained a member of the reserve forces, which made him vulnerable to a second call up. Being vulnerable to a second call up and actually being called up a second time are two different things, and evidencing the former is not in itself sufficient to prove the latter. I therefore find no error is disclosed in this respect.
29. Even if this had been an error, I find it would not have been material due to [30] which states:

"If I am wrong about the Appellant's claim to have served a second short period in the army, and to have deserted, I nevertheless turn to what I considered to be the main issue in this appeal. This is that the appellant is on his account a person who left his military post during a second period of recall. He is therefore a deserter".

30. The Judge therefore goes on to take the Appellant's case at its highest and consider what would happen to him as a deserter (which I shall address further as regards ground 3 below).

31. It follows that I find ground 1 is not made out.

32. As regards ground 2, the Appellant asserts that the Judge finds at [28] that the Appellant could not have left Egypt if he had deserted his post but the Judge's reasoning is inadequate, his findings are lacking and he failed to identify which evidence he relied upon to arrive at this conclusion.

33. The Appellant has not clearly explained what is wrong with the Judge's conclusion based on the allegedly unreferenced country evidence.

34. What the Judge said at [28] is this:

"The ability to travel is restricted for example. Further the ability to work is severely restricted if a person is unable to show that they have completed their appropriate period or periods of military service. The appellant states that he left Egypt at the end of July 2019 by plane using his own passport. I find that this is inconsistent with the background evidence that suggests the person who is serving in the army is likely limited in their movement. Secondly the reason which I find this lacks credibility is that the appellant claims that he was a deserter from the army who had not long before left his post clandestinely by escaping from a remote camp. I do not find it credible that he would have been able to do this with ease with which he claims. He was of military service age at the time that he travelled out of Egypt by plane on his own passport and yet he did not experience any difficulties in showing that he had completed military service and had a military exemption certificate as required. I find this undermines his credibility".

35. He goes on to find at [29] that the Appellant's credibility is further undermined pursuant to Section 8 Asylum Immigration (Treatment of Claimants) Act 2004 due to his failure to have claimed asylum in a safe country before coming to the UK.

36. Whilst it is correct that the Judge does not identify the specific background evidence to which he is referring in [28], and this could be said to be an error, this is not his only reason for rejecting the Appellant's claim to have left using his own passport, as he also cites the Appellant's lack of credibility. That lack of credibility is found to stem from both a failure to have claimed asylum earlier and the incongruity of having had to escape clandestinely from a camp shortly before being able to leave the country openly. I find the Judge has provided sufficient reasoning for these findings on credibility and given their presence, it is difficult to see that any failure to properly cite the relevant country evidence is a material error as it was not the only factor considered and was therefore not determinative.

37. In addition, the passage of background evidence cited in ground 2 as having perhaps been ignored by the Judge, or which goes against his findings in [28], is from 15.2.2 of the Country Background Note, Egypt, 2020 which refers specifically to people with charges against their names possibly being put on a

list which would prevent them from travelling. It is therefore of limited relevance to the question of whether people currently serving in the army, whether for a first or second time, and who have not been so charged, face travel restrictions.

38. Further, the Judge has later indicated the background evidence he considered. At [30] he cites the 'key passage index' provided by the Appellant and the 'CPIN Egypt: Military Service - November 2019' and ends that paragraph by stating:

"The Appellant has referred to other background material referring to military service, but it all points to the fact that a person is expected to have documentary evidence of military service, and I find the absence of such documentation from the Appellant has not been given any credible explanation".

39. I note the first paragraph of the key passages index (which, as above, is from 10.1.1 of the Country Background Note Egypt which cites a 2019 DFAT Report) states:

"Current requirements for adult passport applicants include a valid national identity card and four photographs. Male adults (except those born prior to March 1941) additionally require proof of completion of military service, a military service exemption certificate, an expired passport with a recorded exemption from military service or a permission to travel obtained from the Conscription Department".

40. Mr Hussain also referred me to the USSD 2021 Human Rights Report which he said noted that there are restrictions on foreign travel for men who have not completed compulsory military service and have not obtained an exemption and citizens between ages 18 and 40 require permission from the Interior Ministry to travel to 16 countries. So the Appellant's own cited evidence supported there being restrictions on travel for those of serving age, which in turn supports the Judge's finding that it was surprising the Appellant had been able to leave on his own passport without issue.

41. I also find any error in failing to cite the specific country evidence being referred to in [28] is not material since the Appellant leaving the country on his own passport was just one factor considered by the Judge when finding against the Appellant. The Judge found against the Appellant for other reasons, including the lack of documentation [28] and his lack of credibility in failing to claim asylum earlier and providing insufficient explanation as to why not [29].

42. It follows I find that ground 2 is not made out.

43. Overall, I find the Judge's findings in rejecting the Appellant's account are sound. As such, ground 3 and the Judge's findings concerning the treatment of deserters on return do not fall for consideration. Had there been a need to consider ground 3, the sections of the 2020 CPIN on prison conditions would have had to have been considered given that it was part of the country evidence before the Judge.

44. To conclude, I find the decision is not infected by any material errors of law. The decision therefore stands.

Notice of Decision

1. The appeal to the Upper Tribunal is dismissed. The decision of First-tier Tribunal Judge Austin promulgated on 26 September 2022 is maintained.

2. An anonymity direction is made due to the nature of the issues underlying the appeal.

L. Shepherd
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
15 August 2023