



IAC-CH- CK-V1

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

Appeal Number: AA/00536/2014

THE IMMIGRATION ACTS

**Heard at Newport
On 20th August 2014**

**Determination Sent
28th August 2014**

Before

UPPER TRIBUNAL JUDGE POOLE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**S S N A
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr Irwin Richards, Home Office Presenting Officer
For the Respondent: Mr M McGarvey, Legal Representative

DETERMINATION AND REASONS

1. This appeal is subject to an anonymity order made by the First-Tier Tribunal pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. Neither party invited me to rescind the order

and I continue it pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

2. I will refer to the parties in the style in which they appeared before the First-Tier Tribunal.
3. The appellant is a female citizen of Egypt born 28 August 1983. She claimed asylum in October 2013, having arrived in the United Kingdom earlier that month. In a decision letter dated 14 January 2014, the respondent refused her application to asylum and gave directions for her removal. The appellant appealed against that decision.
4. The appeal came before Judge of the First-Tier Tribunal Harmes sitting at Newport in February 2014. The appellant was not represented, but the respondent was represented by a Presenting Officer. The appellant gave evidence. The refusal letter questioned the credibility of the appellant, but the determination shows that Judge Harmes found the appellant to be credible for the reasons given. Judge Harmes allowed the appeal on asylum and on Articles 2 and 3 ECHR grounds.
5. The respondent sought leave to appeal alleging that the judge had failed to give reasons or any adequate reasons for findings on material matters. It further alleged that the judge failed to take into account and/or resolve conflicts of facts or opinion.
6. Specifically it was alleged that the judge had failed to provide adequate reasons for making findings regarding the arrest of the appellant's husband prior to the overthrow of the Morsi Regime. It is also alleged that the judge failed to give reasons for accepting the appellants claimed membership of the "FJP" and criticises the judge for comments that the respondent had based a decision on a biased view of the evidence.
7. Finally, it was suggested that the judge had failed to deal with matters raised in the refusal letter regarding the arrest of members of the Muslim Brotherhood and with regard to whether or not the appellant was wanted by the Police.
8. The application came before another judge of the First-Tier Tribunal who refused the application saying this:

*"1. It is submitted that the objective evidence quoted at paragraph 36 of the reasons for refusal letters states **"Many Brotherhood members are already in detention and warrants are said to have been issued for hundreds more"**.*

2. Further paragraph 39 of the reasons for refusal letter states "When it was put to you how you know for certain that you are wanted, you answered that you 'believe' because you were told (AIR q106)". It is submitted that there is no conflict of fact. The objective evidence states

warrants are said to have been issued and the respondent believes because she has been told she is wanted. Both statements are based on hearsay and have equal weight and do not conflict. The respondent's answer accords with the objective evidence.

3. At paragraph 24 of the determination the learned judge stated "I am satisfied that she believes she is wanted as a result of her membership of the FJO, but she cannot show that there is an actual warrant for her arrest". It is submitted that the learned judge has found the respondent to be credible and further he is satisfied that the respondent believes that she is wanted in Egypt. The objective evidence referred to by the appellant supports that finding. It is submitted that it is immaterial that the judge is unable to come to a firm conclusion about an arrest warrant in relation to the respondent particularly in light of the objective evidence. It is further submitted that the judge's findings at paragraph 26 of the determination are sound".

9. The respondent then renewed the application for leave to the Upper Tribunal. The respondent relied on exactly the same grounds that had been submitted to the First-Tier Tribunal.

10. A judge of the Upper Tribunal granted leave and in doing so said this:

"1. The grounds of appeal assert, in essence, that the judge of the First-Tier Tribunal did not engage with the reasoning in the letter of refusal and that he had not given clear reasons for finding that the appellant was credible.

2. I consider that the grounds of appeal are arguable".

11. Hence the matter came before me sitting in the Upper Tribunal.

12. At the commencement of the hearing I obtained confirmation from Mr McGarvey that his client was present and that she understood the nature of the proceedings.

13. Mr Richards relied upon the grounds seeking leave and he drew special attention to paragraph 18, wherein the judge had said that the conclusions reached by the respondent were "based on a biased view on her evidence, not an objective analysis". Mr Richards referred to this as an unwarranted attack on the respondent and that as a result the judge's conclusions were infected by that attitude. It was a serious allegation. It was not material to the decision, nor was it adequately explained.

14. The reasons for a refusal letter, said Mr Richards, were a fully reasoned decision, whereas at paragraph 22 of the determination the judge refers to his view being "a matter of common sense". This was not reasoned. The Secretary of State relied on objective evidence throughout. A central issue was the challenge to the question of an arrest warrant and at

paragraph 24 the judge came to no firm conclusion. He had therefore declined to make a finding that the appellant would be at risk. The judge had failed to resolve an issue dispute and this amounted to a material error of law.

15. Mr McGarvey (who had not represented the appellant before the First-Tier Tribunal) referred to a skeleton argument. That document suggests that the respondent's grounds seeking leave amounted only to a disagreement with the judge's findings. It was accepted that in certain limited circumstances inadequate reasons could amount to an error of law and Mr McGarvey referred to two authorities.
16. The skeleton argument produced by Mr McGarvey goes on at paragraphs 10 and 11 to suggest that both parties contention regarding the existence (or non-existence) of an arrest warrant should carry equal weight because they are both based on belief, and at paragraph 24 of the determination the judge deals with that conflict.
17. In his verbal submission, Mr McGarvey relied upon his skeleton argument confirm that the appellant believed she was wanted and that had been accepted.
18. In response Mr Richards said it was not sufficient to show merely a belief, it had to be well-founded.
19. At the end of the hearing I announced my decision that I considered there to be no material error of law for the reasons that I now give.
20. I have to say straightaway that I am critical of Judge Harmes regarding the comment that he has made in paragraph 18 of his determination. He has concluded that the Secretary of State made a decision "based on a biased view of [the appellants] evidence". The judge could well be entitled to reach such a conclusion, but there is nothing contained within his determination which explains how he reached that conclusion. In the circumstances that was a very unhelpful comment and the Secretary of State, through Mr Richards, is perfectly right to challenge it.
21. However, I have to consider whether that, in itself, amounts to an error of law which is material to the outcome. Mr Richards says that such a view by the judge has infected his ultimate decision. I do not agree. There is nothing contained in the determination which in anyway punishes the respondent for bias. The conclusions reached by the judge are based on his findings as to the appellant's credibility. He was clearly satisfied to the required standard that the appellant had experienced her stated problems whilst in Egypt and at paragraph 26 the judge came to a conclusion regarding a fear upon return. Whilst accept that the judge has not explained (in paragraph 26) the fear on return, this is clear from a reading of the determination as a whole why he came to that view.

22. The judge is criticised for referring to “common sense” in paragraph 22. A judge is perfectly entitled to use common sense and it is something that is expected of a judge. Judge Harmes goes onto explain the logical steps in arriving at the conclusions that he did.
23. I have to agree with Mr McGarvey that the challenges to the judge’s views are more a matter of disagreement with the findings than anything else.
24. The issue regarding the arrest warrant has been adequately reasoned by the judge. It is a question of “belief”. Paragraph 36 of the refusal letter does contain the words “are said” and this supports the appellant’s contention that she believes in the existence of an arrest warrant. This supports the judge’s conclusions as to future fear.
25. When read as a whole the determination shows that the judge has taken care and has given adequate reasons for his findings. The main issues have been adjudicated upon and conclusions reached. Those reasons are supported by explanation. In the light of other findings I do not consider it an error of law to fail to make findings upon the husband’s arrest. The judge has addressed the basic legal test that has to be met by this appellant and I am conscious of the views expressed by the reported Upper Tribunal case of **Budhathoki (Reasons for Decisions) [2014] UKUT 00314 (IAC)**. To quote from the head note *“It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that parties can understand why they have won or lost”*. Judge Harmes has done this.
26. In the example of the arrest warrant the judge was unable to reach a firm conclusion (24), but he has accepted the appellant’s belief in the existence of such a warrant.
27. I am also conscious of the reported Upper Tribunal case of **VHR (Unmeritorious Grounds) Jamaica [2014] UKUT 00367 (IAC)**. Again Judge Harmes has dealt with the core issues and has adequately given reasons for reaching his conclusions.
28. The respondents appeal is dismissed. I am therefore satisfied that no material error of law exists in Judge Harmes determination and his decisions must stand.

Signed

Date 26/8/14

Upper Tribunal Judge Poole