



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

Appeal Number: PA/13242/2016

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 10 January 2018**

**Determination**

**Promulgated**

**On 6 February 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MURRAY**

**Between**

**AHMED IBRAHIM AHMED HASSANEIN SHATA**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Saeed, Counsel for Aman Solicitors, Wembley

For the Respondent: Ms Brocklesby-Weller, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Egypt born on 14 February 1979. He appealed against the decision of the respondent dated 14 November 2016 refusing his asylum, humanitarian protection and human rights claims. The appeal was heard by Judge of the First-Tier Tribunal Khawer on 8 June 2017. The appeal was dismissed in a decision promulgated on 21 July 2017. An application for permission to appeal was lodged and permission was granted by Judge of the First-Tier Tribunal Saffer on 23 October 2017. The permission states that it is arguable that the Judge may have materially

erred by relying on a letter on the Tribunal file (not the respondent's file as wrongly recorded by the Judge at paragraph 35) without giving the appellant the chance to deal with it and then making adverse credibility findings based on it. The document was a letter from the appellant's representative to the appellant referring to an arrest warrant. The appellant's representative did not have a copy of this letter in the bundle that was served on him and was unaware that the letter was before the First-Tier Tribunal.

2. The grounds go on to state that the Judge was wrong to find that the appellant's actions, putting himself at risk of being shot and killed in order to take photos and videos was implausible, taking into account the fact that media journalists put themselves in positions of danger. They go on to state that the Judge also states that the appellant proffered no explanation as to how the oppression would be exposed if he had no intention of publishing the videos, and that the appellant gave a contradictory account as to the number of occasions on which he took photos and videos. These issues were addressed in the appellant's statement and the Judge has not given any reasons for why he rejected this evidence.
3. There is a Rule 24 response on file. This states that although it is unclear what documents were in the appellant's bundle the grounds are not made out in any event. The document referred to at paragraph 35 was originally generated by the appellant's solicitors and the letter is clearly inconsistent with the appellant's own evidence. The response states that the grounds infer that the appellant's representative intends to argue a point which is clearly untrue and the grounds fail to particularise how this problem can be overcome. The response states that it will be for the appellant to demonstrate the materiality of the complaint.

### **The Hearing**

4. Counsel for the appellant submitted that there is one preliminary issue and that is an amendment to ground 2 in which it is stated that the First-Tier Tribunal finds it to be implausible that the appellant would put himself at risk to take photos and videos. Counsel submitted that no reference has been made to any objective evidence about this.
5. The Presenting Officer opposed this, submitting that the Judge found that the appellant's explanation was not credible as the appellant is not a media journalist and had limited interest in the uprising after Mohammed Morsi was deposed.
6. I refused to allow this amendment as there is nothing in the decision which makes me believe that the First-Tier Tribunal Judge did not consider everything relevant.
7. Counsel submitted that the grounds are adopted. With regard to ground 1 and paragraph 35, although the appellant's solicitors knew about this

letter they were not aware it was before the Tribunal. He submitted that this letter was not in the respondent's bundle or the appellant's bundle. He submitted that the appellant was unaware that the First-Tier Tribunal had this letter and the letter was not put to the appellant at the hearing so he had no opportunity to deal with this, and he submitted that this was unfair. He submitted that credibility is extremely important in this appeal and so this must be a material error of law.

8. I asked about the letter and was told that it was in the First-Tier Tribunal's file but was not brought to the attention of the parties. This is a letter which was sent to the appellant by his representative.
9. Counsel then referred to ground 2. He submitted that the Judge, finding that it was implausible that the appellant would put himself at risk by taking photographs and videos, is irrational, people do this.
10. With regard to ground 3, Counsel submitted that the Judge makes no reference to the witness statement in his decision and that his statement covers all the issues raised by the First-Tier Judge for finding the appellant not to be credible.
11. I was asked to find that there are material errors of law in the Judge's decision.
12. The Presenting Officer made her submissions first of all referring to ground 1 and paragraph 35 of the decision. She submitted that there clearly was no inherent unfairness in the appellant not being asked about this letter. It was a letter to him from his solicitors and it refers to an arrest warrant but the appellant told the Tribunal he had not had an arrest warrant against him and the Judge proceeded on this basis. The last sentence of paragraph 35 states "I also note that the appellant has failed to furnish any such arrest warrant or an expert report thereon in support of this appeal." The Judge found that this went against the appellant's account. He also gave other reasons for failing to believe the appellant's account.
13. I was referred to paragraph 27 of the decision which deals with credibility and in which the Judge states that he has taken into account all the available evidence in the round and the contents of the documents produced by the appellant in support of his account. The Presenting Officer submitted that there is nothing in the decision to indicate that the Judge closed his mind to anything which was before him and he has given proper reasons for all his credibility findings.
14. I was referred to paragraph 39 of the decision and the Presenting Officer submitted that the Judge does not require to address everything before him, but it is clear from this paragraph and the preceding paragraphs that the Judge finds that the core of the account does not meet the lower standard of proof required.

15. At paragraph 30 of the decision the Judge states that when the appellant stated that “he would put himself at risk of being shot and killed by attending allegedly peaceful demonstrations where people were being shot by the authorities in order to take photographs/videos which he had no intention of publishing, but merely which he intended to keep for himself and for the future”, was not plausible. He is not stating that it is not plausible that somebody would put himself at risk of being shot, what he finds implausible is the appellant taking photographs and videos which he had no intention of publishing and thus putting himself in this vulnerable position.
16. The Presenting Officer referred to ground 3 and paragraph 9 in which it is stated that the Judge failed to take into account paragraphs 12, 17, 18, 19 and 21 of the appellant’s witness statement. She submitted that it is clear that the Judge has considered everything before him including the points raised in the refusal letter which were dealt with in the appellant’s statement.
17. The Presenting Officer submitted that the Judge has found that the appellant was not credible, he was vague. She submitted that the Judge has given proper reasons for all his findings and his findings are therefore sustainable.
18. Counsel submitted that the Rule 24 response refers to it being unclear what documents were in the appellant’s bundle and he submitted that the document which was not put to the appellant was not in the appellant’s bundle, it was only in the Tribunal’s file. He again submitted that this letter, relating to the arrest warrant, was not put to the appellant and as it contradicted the appellant’s evidence. The appellant should have had an opportunity to give an explanation and to address whether there is an arrest warrant and if so where it is. He submitted that this is where the unfairness comes in. I was asked to find that this is a material error of law.

### **Decision and Reasons**

19. With regard to ground 2 it is clear that the Judge finds that it is not plausible that someone who is not taking photographs and videos to publish would put himself at risk of being shot and killed, purely to keep these photos and videos for himself. Paragraph 30 of the decision makes it clear what the Judge finds to be implausible and there is no error in this finding.
20. With regard to ground 3 there is nothing before me to suggest that the Judge did not consider the appellant’s statement. At paragraph 27 he states that he has taken into account all the available evidence and whether the appellant’s account may or may not be consistent with the evidence. He has found that, having considered all the evidence, the core of the account is vague and lacking in clarity. At paragraph 29 the judge refers to the appellant being asked questions about taking the photos and videos and the appellant avoiding answering. The Judge then refers to

contradictions in the appellant's evidence and goes on to find that some of the appellant's account in itself is improbable, e.g. that he gave his friend the photographs and videos. At paragraph 34 the Judge again refers to the appellant's evidence being vague. I find that based on the evidence before the Judge he was entitled to the findings referred to in ground 3. Even with the appellant's statement before him the Judge found that the appellant had failed to submit satisfactory evidence to establish even to the standard of a reasonable degree of probability, that the appellant's factual account is true.

21. The main ground of appeal relates to paragraph 35 and whether the letter in the Tribunal file should have been put to the appellant. The appellant denies that there was an arrest warrant but this letter contradicts that. The appellant's wife is the only person the appellant has been in touch with in Egypt since he came to the United Kingdom, and I accept that it would have been sensible to put this letter to the appellant but the appellant must have been aware of the letter as it was sent to him by his representative. I find that this is an error of law but taking into account the other issues which the Judge finds to lack credibility, I do not find that this is a material error of law. It does not make the decision unfair. The Judge has made it clear that he finds the appellant's account to be vague and inconsistent and he has given proper reasons for his credibility findings.

### **Notice of Decision**

22. There are no material errors of law in the Judge's decision promulgated on 21 July 2017. The Judge's decision dismissing the appeal must stand.
23. Anonymity has not been directed.

Signed

Date 05 February 2018

Deputy Upper Tribunal Judge Murray