IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002473

First-tier Tribunal No: PA/00394/2022
PA/55343/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 17th April 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

M.A.H.E.
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Huzefa Broachwalla (Counsel), Syeds Law Office Solicitors
For the Respondent: Ms Sandra McKenzie (Senior Home Office Presenting Officer)

Heard at Field House on 20 November 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) 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 (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

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DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Cansick, promulgated on 30th March 2023, following a hearing at Birmingham on 22nd December 2022. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Egypt, and was born on 31st December 1994. He appealed against the decision of the Respondent dated 1st September 2022, refusing his application for asylum, humanitarian protection, and human rights protection.

The Appellant's Claim

3. The essence of the Appellant's claim is that he feels he will be arrested if removed to Egypt, and detained by the authorities there, because of his participation in a demonstration against President al-Sisi's government. He claims that he participated in political protests between 2013 and 2015 in support of the release of the former Egyptian President Mohamed Morsi. He also claims to have attended further protests on 20th September 2019, where he was demonstrating against President al-Sisi's corruption. As a result, he claims that his friend was arrested at the protest. He was tortured. In consequence, he mentioned the Appellant's name to the authorities. The Appellant had to go into hiding. His house was raided by the authorities on numerous occasions between September 2019 and January 2020. This was detailed in an arrest warrant issued against him, according to him. He then obtained a visa for the UK and left Egypt, with the assistance of smugglers.

4. In the UK, the Appellant formed a relationship with a Ms NM, who is a British national, with her own children.

The Judge's Findings

5. The judge below observed how the Respondent had accepted the Appellant's Egyptian nationality and even that he had participated in demonstrations for the former president in 2013 and 2015. However, the Respondent had not accepted that the Appellant participated in the 2019 demonstration or received adverse attention from the Egyptian authorities as he claimed. Accordingly, his asylum claim had been refused.

6. Mr Broachwalla, who also appeared at the Tribunal below, wisely accepted that the Appellant's involvement in protests in 2013 and 2015, could not in themselves be sufficient to ground his claim in refugee law. This is why a finding that he had actually been involved in a 2019 demonstration against the al-Sisi government itself was important. As far as Article 8 was concerned, Mr Broachwalla again sensibly took the view that the claim was limited to the relationship between the Appellant and his partner and her two children, to be considered outside the Rules. The judge rejected the appeal. It was held that, "the appellant did not claim asylum on arrival at Heathrow airport". When asked

about this, the Appellant stated that, “he in fact claimed asylum by telephone three days after arrival”, and when put to enquiry about this, “he read from his telephone the reference number he was given when he called to make the claim”. Thereafter, the Appellant went on to say that, “he did not claim asylum on arrival as he was following the instructions of the smuggler who told him to claim after arrival in UK.” However, the judge's decision in this respect was that, “I consider this does not change the fact that the appellant misled the authorities”, and this was so, “even though I accept that the appellant claimed asylum three days later, …” (at paragraph 18).

7. Second, there was an expert report before the Tribunal from Dr Alan George, and the judge acknowledged the fact that, “he is an expert in the relevant area” (at paragraph 19). It was noted that the expert “details that the appellant’s account is plausible in the sense that it accords with the expert’s understanding of conditions in Egypt at the time of the account”. However, the judge went on to say that the expert had rightly made it clear that “this is separate to credibility which is a matter for the Tribunal” (paragraph 19). There was then evidence before the judge from the Appellant’s father in Egypt, dated 12th November 2020, in the form of a letter from the father who, “states that on 21 September 2019 his house was raided by state security looking for his son”, and that both he and his wife were assaulted. Moreover, “there have been repeated raids after this up until January 2020”, but the judge then went to say that “without the appellant’s father giving testimony this evidence cannot be fully tested” and that, “I do not therefore place significant weight on the letter alone” (paragraph 21).

8. The fact that the Appellant was able to obtain a passport in his own country and then leave was dealt with by the expert who “details the high level of corruption among public officials in Egypt and that it is plausible a person wanted by the authorities could pass through the airport unhindered” (at paragraph 23). The judge accepted that this account was not unreasonable. The judge also had regard to how the Appellant destroyed his sim card, and was hiding at his aunt’s home, and then left Egypt on 14th December. However, prior to that there were “numerous transactions, including cash withdrawals and payments in a grocery store and at a restaurant, at the time when the appellant was in hiding” (at paragraph 27) and the judge here decided that if the Appellant did so then this was not consistent “with the account of being in hiding, destroying sim cards and the fear of what the appellant believes would be torture from the Egyptian authorities if he was discovered” (paragraph 27).

9. The judge then went on to consider the Appellant’s relationship with his British national partner, whom he met in January 2020, and where they had been in a relationship “since around April 2020”. Her children are also British nationals. The boy is age 6 and the girl was of age 10. The Appellant moved in with his partner and children in January 2022. They then undertook a religious marriage in April 2022. The judge observed that “it is stated they intend to formally marry once her divorce is confirmed”, and that “the appellant’s partner has been suffering from anxiety and depression since 2014 and is treated with medication”, because she has “suffered from domestic abuse in a previous relationship”, and had been also diagnosed with suspected autism. Indeed, the children too have autism and “are detailed as being vulnerable” and are on a protection plan, “arising from emotional abuse they suffered previously”. However, the children saw their biological father once a week (at paragraph 30).

10. On the basis of these facts, the judge went on to record that "I have no reason to doubt the relationship between the appellant and his partner and her children", and that, "I also accept the medical issues that have been detailed". Indeed, the judge went on to say that "I have no doubt that the partner and the children rely on the appellant for support, including emotional support". The judge further added, "I accept the children have formed an attachment to the appellant and look to him as a father figure" (paragraph 31). The judge then considered the interests of the children (at paragraph 33) and observed that, "there is a strong bond between them and the appellant" and that "their biological father would not allow them to move to Egypt". Furthermore, "due to their medial and emotional needs it would not be in their best interests to move there", so that "It is therefore in their best interests that the appellant remains in the UK" (at paragraph 33). However, the judge observed that this was only a primary consideration and "it is not a paramount consideration" (paragraph 33).

11. Taking everything into account, the judge eventually concluded that the Appellant had "developed both his private and family life at a time when his immigration status was precarious", and that "The appellant could not have failed to know his status was precarious when he developed the relationship with his partner and her children" (paragraph 37). The decision of the Respondent was "a proportionate interference with the appellant's family and private life" (paragraph 39). The appeal was dismissed.

Grounds of Application

12. The grounds of application, dated 14th April 2023, make two points. First, that the judge's rejection of the Appellant's claim on the basis that he did not claim asylum upon arrival at the airport was intrinsically flawed because the Appellant had made it clear that he was under the control of an agent and he did, moreover, then claim asylum three days later, which cannot amount to an intention to mislead, as described by the judge. Second, with respect to the Appellant's relationship with his partner, the judge had concluded that "I have no reason to doubt the relationship between the appellant and his and her children", and that, "I accept the children have formed an attachment to the appellant and look to him as a father figure" (paragraph 31). The judge had failed to have regard to the requirements of paragraph 117B(6) of the NIAA 2002 which makes it clear that:

> "(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—
>
> (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
>
> (b) it would not be reasonable to expect the child to leave the United Kingdom."

So, the judge should have carried out an assessment of whether there was a genuine and subsisting relationship of the Appellant with a qualifying child. The judge also should have carried out an assessment on the physical and emotional impact on the Appellant's partner and two children if the Appellant were to be removed to Egypt.

13. On 16th October 2023, permission to appeal was granted by the Upper Tribunal. In the light of the judge's finding about emotional support and that the children

treat the Appellant as a father figure then, if the Appellant could show that the judge was asked to consider his case on this basis with accompanying evidence, the appeal stood to be allowed.

Submissions

14. At the hearing before me on 20th November 2023, Mr Broachwalla submitted that the judge had expressly been asked to consider the appeal on the basis that the Appellant was now the father figure in the life of the children, providing both emotional and physical support, and that there was evidence before the judge which was accepted as such. Ms Sandra McKenzie, for her part, submitted that the decision of the judge was very finely balanced, but on the evidence provided, it was open to the judge to conclude as he had done. The grant of permission makes it clear that permission would not have been granted on the first ground but only on the second ground by a whisker, and then only subject to it being clear that the case had actually been put in the way that is now being argued by Mr Broachwalla, namely, that the Appellant was in the position of a father figure for his wife's children.

Error of Law

15. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law. My reasons are as follows. First, the normal scenario in a case such as this that may be put forward is that where the Appellant has no right to remain in the UK, but has developed Article 8 rights, that he continue to pursue these rights in his home country, and that his family and children accompany him there, because there is no right in law to choose the country from which to exercise one's Article 8 rights. That is clearly not possible on the facts of this case. The judge had found there to be "a strong bond" between the appellant and the children. The judge has also found there to be "medical and emotional needs" which suggest that "it would not be in their best interests to move there". In any event, the children's biological father "would not allow them to move to Egypt".

16. If there was any doubt, the judge has actually concluded that "it is therefore in their best interest that the appellant remains in the UK" (at paragraph 33), if the Appellant remains in the UK, then plainly the children must also remain with him given the "strong bond" between them. This is not least because of the judge's additional finding that, in relation to the Appellant's partner, "considering the interest of the children it would be very difficult for her to return to Egypt with the appellant" (paragraph 35). It is not insignificant that the Appellant and his partner "undertook a religious marriage in April 2022" (paragraph 30). Their intention has been to formally marry once her divorce comes through.

17. On a balance of probabilities, it is plain that the children see the Appellant as a father figure because the facts are that "the children see their biological father once a week only" (at paragraph 30). Mr Broachwalla is right that the case was put on the basis that the Appellant was now in the position of a father as far as the children are concerned because the judge makes it clear that, "I accept the children have formed an attachment to the appellant and look to him as a father figure" (paragraph 31).

18. That leaves the issue in relation to ground 1, where the judge has said that the Appellant misled the authorities by not claiming asylum upon arrival. However, as the Appellant explained, he was under direct instructions not to do so from his

agent until he was safely in the UK, and then proceeded to exactly that three days later, and had proof of this before the Tribunal that he was able to refer to. This ground accordingly is also made out.

Remaking the Decision

19. I have remade the decision on the basis of the findings of the original judge, the evidence before him, and the submissions that I have heard today. I am allowing this appeal for the reasons that I have already set out above.

Notice of Decision

20. The decision of the First-tier Tribunal involved the making of an error on a point of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is allowed.

Satvinder S. Juss

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

16th April 2024