



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

Appeal Number: PA/06766/2018

THE IMMIGRATION ACTS

**Heard at Birmingham CJC
On 4 June 2019
Prepared 4 June 2019**

**Decision & Reasons Promulgated
On 27 June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

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

Respondent

Representation:

For the Appellant: Mrs H Aboni, Senior Presenting Officer

For the Respondent: Mr P Draycott, counsel, instructed by Paragon Law

DECISION AND REASONS

1. In this decision the Respondent is referred to as the Claimant and the Appellant is referred to as the Secretary of State.
2. The Claimant a national of Egypt, date of birth 1 July 1998 appealed against the Respondent's decision of 14 May 2018 to refuse a protection

claim. His appeal came before First-tier Tribunal Judge C Andrew who on 10 October 2018 allowed his appeal on Refugee Convention grounds and on Articles 2 and 3 of the ECHR.

3. Permission was sought by the Secretary of State in grounds settled by the specialist appeals unit and permission was granted by Designated Immigration Judge Shaerf on 30 October 2018.
4. The decision of the Judge it is fair to say is somewhat marked by its brevity and the core ground 1 of the Secretary of State's challenge was essentially that the Judge had failed to resolve issues which raised doubts about the reliability of the claim.
5. There was no doubt that the Judge identified issues relating to inconsistency and resolved them, in the context of unchallenged medical evidence describing the impact of ill-treatment sustained by the Claimant as a minor at the hands of the state or agents of the state as claimed. The Judge accepted the basis of claim, applying the lower standard of proof applicable in protection based claims, and concluded that the Appellant had given a credible account of the general ill-treatment. Although it was fair to say the issue of the inconsistency of his presence at the time his father was killed or not was really somewhat immaterial to the issue which did not seem to trouble the Judge, namely the extent to which the Claimant had himself suffered injuries and ill-treatment at the hands of those State third parties.
6. I agree with Mrs Aboni that the decision was by no means perfect in terms of meeting and dealing with every issue that was raised with the Judge, but on the other hand I am mindful of the fact that decisions of the First-tier should not be interfered with unless there is clearly an error of law or a lack of reasons or adequate and sufficient reasons to justify the decision. There were cited to me the cases of *KU Pakistan* [2012] EWCA Civ 107 and *Shizad* [2013] UKUT 00085 addressing the sufficiency of reasons and the

extent to which the Judge making the primary findings should not be interfered with unless those findings were not reasonably open to the Judge to make.

7. In the normal course of events reading the Judge's decision I could undoubtedly have been critical of the sufficiency of reasons but I did not find them so inadequate that any other Tribunal seized of the same material would have likely come to a different conclusion. Rather it seemed to me the Judge concluded, albeit briefly, that the Appellant was at risk from the authorities in Egypt and/or perhaps their surrogates but also because of an imputed political opinion. The Judge does not actually address if there was a risk from Muslim Brotherhood save insofar as referring to it as a basis of fear of the Appellant. The Judge made no clear, if any, finding on whether the Muslim Brotherhood posed a risk, but the Judge did assess this in the context of the current US State Department Report for 2017 issued in April 2018 and noted the extent to which the government or agents of the government committed arbitrary and unlawful killings and the extent to which the authorities acted against perceived terrorists.
8. I therefore conclude that although it is a somewhat less than full resolution of the points raised by the Secretary of State that the Judge applied the correct burden and standard of proof and reached conclusions that she was entitled to reach: Simply redoing the exercise served no real purpose. In fairness to Mr Draycott he provided a very substantial and lengthy skeleton argument in response to the Secretary of State's grounds and it seemed to me the realities of it were that in terms of internal relocation and sufficiency of protection, given the findings that the Judge reached on who posed a risk and why a risk was posed to the Appellant, that the absence of the Judge expressly dealing with it in the circumstances did not actually matter. It would in effect, were it to be looked at again, simply resolve to the same points that the basis of the risks posed came from the state or agents of the state. Therefore the reality was that neither

sufficiency of protection nor internal relocation would be a realistic or reasonable option.

9. For these reasons I conclude then that the Secretary of State's complaints whilst superficially attractive ultimately have encountered a decision which was sufficient for the purposes of properly disposing of the appeal.

DECISION

The Original Tribunal's decision stands. The appeal of the Claimant was allowed on Refugee Convention and Articles 2 and 3 ECHR grounds. The appeal of the Secretary of State is dismissed.

ANONYMITY

The anonymity order made by the Original Tribunal stands and is continued.

DIRECTION REGARDING ANONYMITY - RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Dated 20 June 2019

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore any fee award stands.

Signed
Deputy Upper Tribunal Judge Davey

Dated 20 June 2019