



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

Appeal Number: PA/11249/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 24 January 2019**

**Decision & Reasons
Promulgated
On 15 February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**ASIAO
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms. S. Iengar, Counsel instructed by Local Solicitors
For the Respondent: Ms. K. Pal, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against a decision of First-tier Tribunal Judge Widdup, promulgated on 4 October 2018, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse a grant of asylum.
2. I continue the anonymity order made in the First-tier Tribunal.
3. Permission to appeal was granted as follows:
"If it is the case that the First-tier Tribunal failed to make a clear finding on whether the appellant's father was a member of the Muslim

Brotherhood or whether such membership was known to the Egyptian authorities, the decision is, arguably, flawed.

It is further arguable that the judge's treatment of the successful decision of the appellant's brother was in error."

4. The Appellant attended the hearing. Following a brief discussion, Ms. Pal conceded that the decision involved the making of a material error of law. I set the decision aside.

Error of Law

5. The grounds submit that essentially no clear finding was made in relation to the father's membership of the Muslim Brotherhood, with reference to the determination of the Appellant's brother's appeal. In the Appellant's brother's appeal, it was accepted that the Appellant's father was a member of the Muslim Brotherhood and that he was known to the authorities before 2013. In that decision, the judge found that the Appellant's brother was at risk of persecution on return because of his association to his father, a known member of the Muslim Brotherhood.

6. I have carefully considered the decision relating to the Appellant. At [34] the Judge refers to the fact that the brother's account of the father's membership of the Muslim Brotherhood was consistent, plausible and consistent with the background evidence. At [52] and [53] the Judge finds:

"I note that Judge Griffith considered that the younger brother's evidence about his father was consistent internally and consistent with background evidence. I cannot reach the same conclusion about this Appellant. There are inconsistencies to which I have referred and there would appear also to be an inconsistency with the CIG.

I also take into account that the Appellant's account of the raid on the house and his conviction and sentence is lacking in credibility. I have considered whether his lack of credibility can be confined just to those elements of his claim but in the light of the background evidence and these inconsistencies I find I cannot do so".

7. With reference to these paragraphs, given that the Appellant's father is one and the same person as the Appellant's brother's father, and given that there is no dispute as to the relationship between the Appellant and his father, I find that [52] is somewhat confused. Although Judge Griffith considered the younger brother's evidence about his father to be consistent, and the Judge considers that the Appellant's evidence was not consistent, there is no clear finding as to whether this means that the Judge considers that the Appellant's father was not a member of the Muslim Brotherhood.
8. It was accepted that there was no appeal against the decision in the Appellant's brother's case. Therefore there is a finding in a decision of the First-tier Tribunal that this Appellant's father was a member of the Muslim Brotherhood, and had been since 2013. I find that, although the Judge has referred to the Appellant's brother's decision, he has not given any clear reasoned justification for departing from the finding regarding the Appellant's father.

9. Ms. Pal submitted that, had the Judge gone on to consider the Appellant's case, and the risk on return to him as a result of his father's membership of the Muslim Brotherhood, and had subsequently come to the conclusion that he was not at risk, there would be no material error of law. However she accepted that she had some difficulty in arguing that the decision should be upheld given [52], and given the lack of reasoning for departing from the findings of the First-tier Tribunal in the Appellant's brother's appeal. She submitted that the Judge appeared to infer that the Appellant was not at risk, but I find that in all the circumstances, especially given the previous finding that the Appellant's father was a member of the Muslim Brotherhood, an inference is far from sufficient.
10. I find that the Judge has erred in his approach to the decision of Judge Griffith. He has failed to give very good reasons or compelling evidence to justify determining the issue of the Appellant's father's membership of the Muslim Brotherhood afresh, in accordance with the case of AA (Somalia) [2007] EWCA Civ 1040. There is no clear finding in the decision as to whether or not the Appellant's father was a member of the Muslim Brotherhood and, consequently, there are no findings as to the risk to the Appellant on account of this.
11. I find that the decision involves the making of a material error of law. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party's case to be put to and considered by the First-tier Tribunal. Given the nature and extent of the fact-finding necessary to enable this appeal to be remade, having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.

Notice of Decision

12. The appeal involves the making of a material error of law and I set the decision aside.
13. The appeal is remitted to the First-tier Tribunal to be reheard.
14. The appeal is not to be listed before Judge Widdup.

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 his 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.

Signed

Date 12 February 2019

Deputy Upper Tribunal Judge Chamberlain

