Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07220/2018

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 27th January 2020	**On 30th January 2020**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

AAF
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr V Madanhi, CB Solicitors
For the Respondent: Mrs H Aboni, Home Office Presenting Officer

DECISION AND REASONS

1. An anonymity direction was made by the First-tier Tribunal ("F*t*T"), and as this a protection claim, it is appropriate that a direction is made. Unless and until a Tribunal or Court directs otherwise, AAF is granted anonymity. No report of

these proceedings shall directly or indirectly identify him or any member of his family. This direction applies amongst others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.

2. The appellant is a national of Egypt. His appeal against the respondent's decision of 20th May 2018 to refuse his claim for asylum and humanitarian protection was dismissed by First-tier Tribunal Judge Bristow ("the judge") for reasons set out in a decision promulgated on 12th December 2018.

3. The appellant claims the decision of the judge is vitiated by one or more errors of law that were material to the outcome of the appeal. Permission to appeal was granted by First-tier Tribunal Judge Bird on 7th January 2019.

4. The appellant claims the judge erroneously identified a minor inconsistency in the account given by the appellant regarding the duration of his detention in 2015 as undermining the credibility of the appellant's account. Mr Madanhi submits the minor inconsistency should have been considered by the Judge in light of the medical evidence that was before the Tribunal confirming the appellant suffers with 'anxiety and depression'. He submits, the judge accepted at paragraph [33] of the decision, that the appellant had been diagnosed with anxiety and depression. Mr Madanhi submits the inconsistency in the appellant's evidence regarding the duration of his detention in 2015 that the judge refers to, was not material and was insignificant when viewed in light of the medical evidence and the background of the appellant's experiences. The appellant had claimed that he was detained and tortured in 2015 and during his detention boiling water was poured onto his genitals. The judge noted at paragraph [27] that the letter from Prestbury Medical Practice dated 21st December 2016 refers to the author having *"... seen old burn marks around his genital area..."*. The medical evidence therefore supported the appellant's claim that he has been detained and tortured.

5. Mr Madanhi submits the judge also failed to give anxious scrutiny to the claim made by the appellant by failing to consider the appellant's account of how he was able to provide a copy of a membership card for the Freedom and Justice Party. Furthermore, the judge erred in concluding, at paragraph [31] of the decision that he can place no reliance upon the document from the South Beheira Criminal Court that was relied upon by the appellant. Mr Madanhi submits there was no allegation that the document relied upon is a forgery and the judge erred in seeking to go behind the content of the document. The appellant could not be expected to know why the court had dealt with the matter in the way it did. Finally, Mr Madanhi submits the judge erroneously considered the appellant's account that he has left his wife and children in Egypt, and his failure to claim asylum earlier during his journey to the UK, as undermining the credibility of his account of events. He submits it was irrational for the Judge to conclude that it is not credible that the appellant would leave behind a wife, in circumstances where the appellant was going to undertake a long and arduous journey to ensure his safety, with every intention that his wife and children would join him once they were able to do so, and family reunion was possible.

6. In reply, Mrs Aboni submits the judge directed himself correctly and gave adequate reasons for the findings reached. She submits the judge carefully considered the claim made by the appellant and it was open to the Judge to conclude, at [24], that on his own account, the appellant's involvement with the Muslim Brotherhood cannot be described as significant. The judge carefully considered the appellant's claim that his membership card for the Freedom and Justice Party was destroyed and his account of how he was able to obtain a copy. It was open to the Judge to conclude that she did not find the appellant's explanation as to why he was able to provide a copy of the membership card, to be at all credible and to find that the document is not reliable.

7. Mrs Aboni submits there was adequate consideration of the appellant account that he was detained and torture in 2015. She submits the letter from Prestbury

Medical Practice dated 21st December 2016 had been before the respondent and considered by the respondent in the decision to refuse the claim for international protection dated 20th May 2018. The respondent had noted the letter states that the appellant suffers from a 'deviated septum' and refers to burn marks around the appellant's genital area. The respondent had stated that the appellant had failed to provide a medical report as evidence of the torture that he claimed to have been subjected to. The appellant had failed to adduce any further medical evidence in support of his appeal. The judge noted, at [27], that the author of the letter confirms that they have "*seen old burn marks around his genital area",* and the judge was entitled to note that there is no discussion about the asserted mechanism of the injury and that the author does not appear to have any expertise in scarring or diagnosis of injuries related to torture.

Discussion

8. I have carefully read the decision of the First-tier Tribunal Judge and the evidence that was before the Tribunal. The judge concluded, at paragraph [36], as follows:

> "I have carefully considered all of the evidence even if I have not referred to it directly. I have reflected on that evidence in the light of Miss Sandal's and Mr Madanhi's submissions. I have given the evidence anxious scrutiny. I have taken a view of the evidence 'in the round'. I do not find the appellant's account to be at all credible. I am not satisfied that the appellant has proved his account to the lower standard. I am not satisfied that he has proved to the lower standard that he has been tortured, that a sentence of imprisonment has been passed upon him in Egypt and that he has a well-founded fear of persecution for reason of his imputed or actual political opinion."

9. That was in my judgement, a conclusion that was properly open to the Judge for the reasons identified in the decision. I reject the claim that in reaching that decision, the judge simply relied upon a minor inconsistency in the appellant's account of the duration of his detention in 2015. It was in my judgement open to the Judge to have regard to the unexplained inconsistency in the appellant's evidence. Although there was medical evidence before the Tribunal, that

evidence was wholly lacking. There was a letter before the Tribunal from Dr Hamdy dated 23rd March 2017, which simply states:

> "[AAF] Suffers with anxiety and depression, his sleep is interrupted with nightmares, he has lost appetite, he also feels tired and he has become forgetful…"

10. That very limited evidence does not provide any explanation for the appellant's inability to provide a consistent account regarding the core of his claim.

11. The judge referred to the letter from the Prestbury Medical Practice at paragraph [27] of her decision. That letter simply states:

> "He seeks a report detailing injuries he says he sustained during incarceration in Egypt. I can confirm that he has a deviated septum to his nose which he says occurred when he was beaten by police in Egypt. I have also seen old burn marks around his genital area, which he says he sustained when boiling water was poured on him, again by the police in Egypt."

12. The judge found, at [27], that letter is wholly inadequate as evidence of injuries arising from torture. The Judge properly noted the author makes no comment on the veracity of the appellant's asserted mechanism for the injury and there is no discussion as to other possible causes. The judge noted the author does not appear to have any expertise in scarring or the diagnosis of injuries related to torture. The judge also noted, at [28], the appellant was referred to Freedom from Torture in June 2017 and the appellant has attended individual's therapy sessions. It was in my judgement open to the Judge to note that in all the circumstances it is surprising there is no detailed expert evidence relating to the scars and the mechanism of the injuries.

13. In my judgement a careful reading of the decision demonstrates the judge also had regard to the documents relied upon by the appellant in support of his claim. In Ahmed –v- SSHD [2002] Imm. A.R. 318, Mr Justice Collins set out guidance as to the assessment of documents relied upon; It was for the appellant to show the reliability of the documents relied upon and for the judge to decide whether the documents were reliable after looking at all the available

evidence. The judge properly considered the membership card for the Freedom and Justice Party and the appellant's account that the original was destroyed, and he was able to obtain a copy that been left on his computer. It was in my judgement open to the Judge to find the appellant's explanation as to why he was able to provide a copy, not to be credible for the reasons set out at paragraph [26] of the decision. It was equally open to the judge to conclude that no weight could be attached to the document that purports to be from the South Beheira Criminal Court for the reasons set out at paragraph [31] of her decision.

14. In JT (Cameroon) -v- SSHD [2008] EWCA Civ 878, the Court of Appeal confirmed that The Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 s.8 was no more than a reminder to fact-finding Tribunals that conduct coming within the categories stated therein had to be considered when assessing the credibility of an asylum seeker. The F*t*T judge was entitled to have regard to the conduct of the appellant and the explanation provided. While such conduct had to be considered and was capable of damaging credibility, the Court of Appeal confirmed that s8 did not dictate that damage to credibility inevitably resulted, and the weight to be given to the conduct was entirely a matter for the judge.

15. The assessment of credibility and the risk upon return is always a highly fact sensitive task. The judge was required to consider the evidence as a whole. The findings and conclusions reached by the judge were neither irrational nor unreasonable in the *Wednesbury* sense, or findings and conclusions that were wholly unsupported by the evidence.

16. In my judgement it was properly open to the Judge to dismiss the appeal for the reasons set out in her decision promulgated on 12th December 2018. It follows that in my judgement the decision of First-tier Tribunal Judge Bristow is not tainted by a material error of law and the appeal is dismissed.

Notice of Decision

17. The appeal is dismissed

18. The decision of First-tier Tribunal Judge Bristow stands.

Signed Date 27th January 2020

Upper Tribunal Judge Mandalia