IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005042

First-tier Tribunal Nos: HU/56105/2022
IA/08753/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 28 June 2024

Before

UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

MAHMOUD SABRY AMIN ABDELAZIZ ALMAKHZANGY
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Moriarty, Counsel, instructed by Elaahi & Co Solicitors
For the Respondent: Ms S McKenzie, Senior Home Office Presenting Officer

Heard at Field House on 5 February 2024

DECISION AND REASONS

1. This is an appeal by a citizen of Egypt against a decision of the respondent on 3 September 2022 refusing him leave to remain on human rights grounds in order to settle with his sponsor, an Italian national lawfully resident in the United Kingdom with "pre-settled status".

2. Permission to appeal was granted by Upper Tribunal Judge Sheridan who found it arguable that the First-tier Tribunal Judge had not considered the evidence properly and added:

> "It is also arguable that procedural unfairness arose from adverse findings made in respect of points not raised at the hearing. See Abdi & Ors v Entry Clearance Officer [2023] EWCA Civ 1455"

3. Clearly this point identified by Judge Sheridan was not expressly raised as a ground of appeal by the appellant but that is immaterial. Permission had been

granted on that basis and the complaint was, with respect to all involved, better formulated by Upper Tribunal Judge Sheridan. It was not an entirely new matter.

4. We consider the Respondent's Reasons for Refusal. It begins by saying that "Your application as a Family Member (Partner) has been refused". The letter acknowledged that the decision was in response to a "human rights claim" that the appellant made on 18 November 2021 for permission stay as a partner and that application lead to the decision complained of.

5. The respondent noted that it was the appellant's case that he was in a relationship with a partner resident in the United Kingdom but found that he did not meet all the "eligibility" requirements because he did not have leave to be in the United Kingdom. The appellant did not rely on a relationship with a child and so EX.1 of Appendix FM was not helpful. The respondent considered the case under EX.2 of Appendix FM, which is a possibly helpful rule but the respondent found that there was no evidence of "insurmountable obstacles" in the way of the appellant or his partner continuing their family life together outside the United Kingdom in Egypt.

6. The respondent noted that the appellant's partner is recovering from skin cancer but found there was suitable treatment available in Egypt.

7. It was against this background that the First-tier Tribunal made its decision. The respondent did not appear before the First-tier Tribunal. The judge gave directions in law and then made findings. Some can be summarised but we find it appropriate to set out below paragraphs 20 and 21 of the Decision and Reasons. The judge said:

> "20. There was no satisfactory evidence that the Appellant had been trafficked from Egypt as a minor as was asserted on his behalf. The tribunal finds that he is simply one of many North African young men who have paid criminal gangs to bring them to Europe and to evade immigration controls *en route*. Plainly the Appellant must have had access to a substantial sum in order to pay those criminals, which puts his claims of poverty into doubt. In the Appellant's case, he had been lawfully removed to Belgium after his first attempt to reach the United Kingdom, yet he persisted. The tribunal finds that the Appellant had ample opportunity to claim asylum in a safe country had he any basis for such a claim.
>
> 21. The tribunal finds that the Appellant's self-declared wish to avoid military service in Egypt was not and is not a proper basis for a protection claim. There was no evidence produced to the tribunal to show that Egypt's armed forces are engaged in illegal military action or that conditions of service breach Article 3 ECHR. There was no evidence that conscripts are unpaid, receive no leave or are not entitled to contact with their families. The tribunal infers that conscripts would receive training in a variety of skills as part of their service, so as to maximise the benefit the armed forces in the first instance".

8. The judge found that the appellant had no fear of persecution in Egypt and no pending prosecution because he had a passport issued in November 2019. There was evidence that the appellant had learnt to tile in Egypt which the judge found was a skill which suggested aptitude and employability.

9. It was the appellant's case that his father had died but there was no evidence that he was estranged from his mother or siblings.

10. The judge found no satisfactory evidence that the appellant had been called up or would be conscripted. There was some evidence that he might face a penalty for reporting late but the judge was not satisfied that the appellant had been required to report at all. He would get a resettlement grant and so would not be penniless.

11. At paragraph 27 the judge said:

> "Plainly the Appellant found some means of supporting himself between 2017 and 2020 when he met Ms Guglielmo. The tribunal infers that he worked illegally and paid no taxes. He would be able to support himself in Egypt. The Appellant's private life Article 8 ECHR claim is dismissed".

12. The judge then looked at the family life claim and noted that the appellant could have returned to Egypt at any time and sought entry clearance as a partner but did not do that. The judge noted it was Ms Guglielmo's case that her family were strict Roman Catholics and would not accept the appellant. The judge said:

> "That claim was hard to understand because Ms Guglielmo made no claim that her first husband was Roman Catholic. Indeed the name by which she identified him (see [6] of her second witness statement) indicates that he was probably Muslim".

13. The judge also noted that there was no evidence that Ms Guglielmo was a practising member of any Christian church.

14. The judge noted that Ms Guglielmo had a history of ill health but had managed without the appellant's support for some time and the judge also commented at paragraph 32:

> "Not surprisingly, Ms Guglielmo's mental health has been adversely affected by her forming a second relationship with a person not entitled to be in the United Kingdom. It is almost inevitable that this will have caused depression, on top of her general ill health worries, as Dr Swede unsurprisingly said."

15. The judge found that Ms Guglielmo had childcare qualifications and would be employable in Egypt. There was no satisfactory reason why she could not learn Arabic and make friends in that country.

16. The judge said there was no "satisfactory evidence" that either the appellant or his partner practised any religion actively and then said that:

> "Ms Guglielmo stated that her family had accepted her first husband, which casts doubt on her claims of Roman Catholic strictness".

17. The judge found there would be no "very significant obstacles" to establishing family life in Egypt.

18. We have considered the report of Dr Swede, a psychologist working sometimes in the National Health Service. We set out below an extract from a supplement to her report dated 6 April 2023 which was written in response to comments from the respondent. Dr Swede said:

> "As stated in the report, Ms Guglielmo's presenting mental health issues were assessed as having been initially precipitated by her cancer diagnosis and treatments, likely making her more vulnerable to the detrimental mental health impacts of further adverse life events such as those she is experiencing in relation to her husband's immigration difficulties are presently exacerbating her symptoms further".

19. Dr Swede went on to describe Ms Guglielmo as "psychologically vulnerable individual who is likely to experience significantly greater distress in the event of her husband's enforced removal and thus their separation". Dr Swede added that Ms Guglielmo's "depressive and anxious symptoms are currently in the severe range, and they are unlikely to ameliorate in the absence of appropriate treatment and safety instability of her social circumstances".

20. We have considered also the opinion of a lawyer, a Mr A Ibrahim who was asked to express an opinion on the consequences facing the appellant in the event of his return. He said:

> "He will not be allowed to enter the Egyptian territories fearing that additional year will be added to his military service and he will be subject to imprisonment and fine due to committing a crime of failure to attend conscription as stated in the abovementioned law".

21. The First-tier Tribunal Judge has clearly read this but appears to give it little weight without explanation. It was pointed out in the grounds that this evidence had been disclosed and not challenged by the respondent.

22. It is against this background that we consider Counsel's grounds of appeal.

23. The grounds contend that the judge was wrong to imply that the appellant would be able to get support from his family. Under the heading Ground 1 "Material legal errors in relation to the assessment of the facts and evidence" it was pointed out that it was asserted in the appellant statement that his family would not accept the marriage because the appellant's wife is a Catholic and he is a Muslim. The appellant said that it:

> "would be wrong for me to take her to Egypt with me when I know what kind of life awaits her there – she would be forced to convert to Islam and practise it".

24. Ground 2 is under the blanket heading "Inadequately reasoned conclusions in relation to paragraph 276ADE and EX.1 & Ex.2 of Appendix FM".

25. It is the appellant's wife's evidence that the appellant had "supported her in an incredible way" through significant medical issues. It was the opinion of Dr Swede that leaving the country in her present psychological state would cause Ms Guglielmo to face a significant risk of impairment to her health and wellbeing.

26. Ground 3 is under the heading "Inadequately reasoned conclusions in relation to the Entry Clearance issue under Article 8, ECHR".

27. Essentially the complaint is the judge's findings that any disruption will be proportionate are not reasoned adequately.

28. Mr Moriarty did address us but essentially adopted his skeleton argument and grounds of appeal which we have considered above.

29. Ms McKenzie contended that there was nothing wrong with the decision. She said that the arguments were complaints about a decision based on weight rather than error of law and there was considerable public interest in enforcing the Rules and the decision was open to the judge.

30. We have reflected on these things.

31. We remind ourselves that the First-tier Tribunal Judge is not writing a three-part novel or drafting a statute. We must not be overly aggressive in concluding that there was an error of law or the decision was reasoned insufficiently. We have reflected on that. There are elements of the decision that do concern us. One is

that the judge was so ready to assume that the appellant was not trafficked when the claim that he was trafficked does not seem to have been challenged, and another is that the judge was so willing to conclude there would be some support for the appellant in the event of his return to Egypt when it was so clearly his case that there was not. We also do not understand why the judge rejected the evidence that the appellant would be eligible for military service. We have read the expert evidence. It is certainly rather less than a fully reasoned document but it reaches clear conclusions that did not seem to be challenged by the Secretary of State. The point is obvious that the appellant's wife is, on anybody's version of events, in a very vulnerable mental state and has benefited greatly from the presence of her husband supporting her. On any version of events she would have difficulties going to Egypt. The language is not known to her and the culture is not known to her. A person of ordinary robustness would find this difficult. She would only have her husband to support her on one reading of the evidence and it may be that support had to be conducted from a military camp for some years. We do not say that is the only conclusion available on the evidence but it appears to be the appellant's case and it appears to have been rejected. We do not know why it was rejected.

32. We also agree that the judge erred by not making a clear finding concerning the vulnerability of Ms Guglielmo. Whether or not that would have made a difference to the evidence and how it is assessed is unclear but it is a lurking doubt on our part that the apparent error is material.

33. The short point is that having considered the arguments raised although the decision of the First-tier Tribunal Judge is clear, we are not satisfied that it shows proper regard to all the evidence in the case. It was the appellant's case that apart from the fact that neither of them wished to go to live in Egypt it was not possible to live in Egypt because the appellant's wife is vulnerable and mentally ill and not adapted to life in Egypt and would be having to cope on her own without anyone to support or help her. This may not be a well-founded fear but it is an express fear and although the judge clearly does not accept that we are not sure how he has got there in the light of the evidence that was before him, particularly evidence that was not challenged. We have reflected carefully on these things. We find the judge has erred and we set aside his decision. We do not find it would be right to move seamlessly to making the decision ourselves. A lot depends on the evaluation of the evidence and how it is explained and Mr Moriarty did indicate that in the event of us finding this there may be an application to serve further evidence that would be more pertinent.

34. **Notice of Decision**

35. In all the circumstances we find the First-tier Tribunal erred in law. We set aside its decision and direct the case be heard again in the First-tier Tribunal.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24 June 2024